THE

HISTORY

OF THE

CASES

OF

CONTROVERTED ELECTIONS,

WHICH WERE

Tried and determined during the Firſt and Second Seſſions of the Fourteenth Parliament of Great-Britain.

XV AND XVI GEO. III.

BY SYLVESTER DOUGLAS, ESQ. of LINCOLN'S-INN, BARRISTER AT LAW.

Quod neque inflecti gratiâ, neque perfringi potentiâ, neque adulterari pecuniâ poſſit. CIC.

IN FOUR VOLUMES.

VOL. IV.

DUBLIN:

PRINTED BY J. WILLIAMS, [No. 21.] SKINNER-ROW.

M,DCC,LXXVIII.

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XXXII.

THE SECOND

CASE

Of the BOROUGH of

CRICKLADE,

In the County of WILTS.

The day appointed for chooſing the Committee was Tueſday the 6th of February, but, an hundred members not being preſent, the Houſe adjourned till the day following.

On Wedneſday, the 7th of February, the Committee was choſen, and conſiſted of the following Gentlemen:

Sir Tho. Clavering, Bart. Chairman,	Members for	Durham county.
Sir George Robinſon, Bart.		Northampton.
Walter Stanhope, Eſq;		Carliſle.
Viſcount Middleton,		Whitchurch.
Edward Roe Yeo, Eſq;		Coventry.
Sir Michael Le Fleming, Bart.		Weſtmoreland.
William Hervey, Eſq;		Eſſex.
William Lygon, Eſq;		Worceſterſhire.
Daniel Laſcelles, Eſq;		Northallerton.
John Frederick, Eſq;		Newport, Cornwall.
Sir Philip Hales, Bart.		Downton.
William Chaytor, Eſq;		Penryn.
Charles Goring, Eſq;		Shoreham.
NOMINEES.		
Of the Petitioner,		
William Adam, Eſq;		Gatton.
Of the Sitting Member,		
George Johnſtone, Eſq;		Appleby.

PETITIONERS.

Six Perſons, on behalf of themſelves and others, Electors of the Borough of Cricklade.

Fourteen Perſons, on behalf of themſelves, and others, Electors of the ſaid Borough.

Sitting Member.

Samuel Peach, Eſq.

COUNSEL

For the Six Petitioners.

Mr. Manſfield, Mr. Graham.

COUNSEL

For the Fourteen Petitioners.

Mr. Darrel.

COUNSEL

For the Sitting Member.

Mr. Bearcroft, Mr. Lee.

THE SECOND

CASE

OF THE BOROUGH OF

CRICKLADE.

AFTER the election to ſupply the vacancy for this borough, occaſioned by the death of Mr. Earle, had been declared void, on the trial of the cauſe during the laſt ſeſſion of Parliament (1), a new election took place, on the 28th of February, 1775, and the four following days. Samuel Peach, Eſq; John Dewar, Eſq; and Samuel Petrie, Eſq; were candidates. Mr. Peach was returned; and three petitions were preſented to the Houſe, complaining that he was unduly elected and returned; *viz.* one of Mr. Dewar, and two of two different ſets of voters, in the borough.

The ſeſſion was over before the trial of theſe petitions came on; but, at the beginning of this ſeſſion, within the time limited for that purpoſe, the ſame perſons renewed their petitions (2). The day appointed for taking them into conſideration was Friday, the 2d of February, which was afterwards altered to Tueſday, the 6th of that month (3), and the Houſe not being complete on that day, the ballot took place on Wedneſday, the 7th of February.

On the 7th of February, when the parties and their agents were called in, nobody appeared on the part of Mr. Dewar. It was ſuggeſted, that he was gone abroad, and that his father was deſirous that his petition ſhould be withdrawn; but *he* did not produce any authority from his ſon, to

(1) *Supra*, vol. i. p. 314.
(2) Votes, 31 Oct. 1775, p. 34, 35, 36.
(3) *Ibid.* 1 Feb. 1776. p. 165.

to make an application for that purpoſe to the Houſe. If he had, the ſame difficulty would have ariſen here, which ſoon after happened in the ſecond caſe of Ivelcheſter (1). When *ſeveral* petitions are preſented, complaining of the *ſame* election or return, a *ſeveral* and diſtinct order is made concerning *each*, appointing the ſame day for taking each of them into conſideration; but, when it is found convenient to alter the day firſt fixed to a ſubſequent one, the form is, firſt to diſcharge the *ſeveral* orders before made, and then to make a *joint* order for taking all the petitions into conſideration on ſuch ſubſequent day. This was done on the firſt of February, with regard to the three petitions in queſtion. The form will be beſt underſtood, by inſerting the words of the votes.

1 February, 1776. "The Houſe was moved, that the "ſeveral orders made upon the 31ſt day of October laſt, "for taking into conſideration, to-morrow, the petition of "John Dewar, Eſq; and alſo the petition of the ſeveral "perſons whoſe names are thereunto ſubſcribed, in behalf "of themſelves and others the electors of the borough of "Cricklade, in the county of Wilts; and alſo, the petition of the ſubſcribers, electors of the borough of Cricklade, in the county of Wilts, in behalf of themſelves "and others, electors of the ſaid borough, ſeverally complaining of an undue election and return for the ſaid "borough, might be read, and the ſaid orders being read "accordingly,

Ordered, "That the ſaid orders be diſcharged."

Ordered, "That the ſaid petitions be taken into conſideration upon Tueſday next, at three of the clock in the "afternoon (2)."

This laſt was the order of the day on Wedneſday, the 7th of February, and, according to the ſtatute (3), was read. It extended to all the three petitions; but, as neither Mr. Dewar, nor any counſel or agent on his behalf, appeared, the Committee, after they were choſen, were only ſworn to try the merits of the two petitions of the voters.

On Thurſday, the 8th of February, the Committee being met, the two petitions were read. They are entered in the votes as follow:

 "A petition

(1) *Vide infra.*
(2) Votes, p. 225.
(3) 11 Geo. III. cap. 42. § 4.

" A petition of the ſeveral perſons whoſe names are " thereunto ſubſcribed, in behalf of themſelves and others " the electors of the borough of Cricklade, in the county " of Wilts, was read; ſetting forth, That at the election " of a repreſentative to ſerve in Parliament for the ſaid bo- " rough, in the room of Samuel Peach and John Dewar, " Eſquires, John Dewar, Samuel Peach, and Samuel " Petrie, Eſquires, were candidates; and that Thomas " Carter, a known friend of the ſaid Mr. Peach, and un- " der the direction of his agents, preſided as bailiff and re- " turning officer of the ſaid borough, to which office the " ſaid Carter was appointed by Arnold Neſbit, Eſq; the " Lord of the hundred, or manor, of Cricklade, and " friend to the ſaid Mr. Peach, and the perſon who intro- " duced the ſaid Mr. Peach as a candidate for the ſaid bo- " rough; and that the petitioners, and many others, duly " qualified, as well by the general laws and cuſtoms of the " land, as by the particular uſage and conſtitution of the " ſaid borough, offered to give their votes for the ſaid " John Dewar, Eſq; but were rejected by the ſaid re- " turning officer, who, under the directions of the agents " of the ſaid Mr. Peach, took upon himſelf, arbitrarily and " illegally, to return the ſaid Mr. Peach, although the " ſaid John Dewar, Eſq; had a large majority of unqueſ- " tionable legal votes, for the ſaid borough; and that the " ſaid returning officer did, likewiſe, partially admit many " votes for the ſaid Mr. Peach, which ſtood preciſely in " the ſame predicament with many which he rejected " when offered for Mr. Dewar; and did likewiſe admit " many perſons to vote for Mr. Peach, whom he ought " not to have admitted, ſeveral of whom were the imme- " diate and avowed agents of Mr. Peach, having no con- " nection with the ſaid borough, but who, under fraudu- " lent and colourable conveyances, were admitted to vote, " to the great injury of the rights and franchiſes of the pe- " titioners, and others, the electors of the ſaid borough; " and that, by theſe, *and other undue, corrupt, and illegal* " *practices*, the ſaid Samuel Peach, Eſq; did procure him- " ſelf to be returned a repreſentative to Parliament, in " manifeſt injury to the rights of the electors, and in " open violation of the law and conſtitution of Parliament: " and therefore praying, that the freedom of election may " be reſtored, and that the ſaid Mr. Dewar may be

" received

" received as duly elected; and that the Houſe will grant " them ſuch other relief and redreſs as they ſhall think " meet (1)."

This was the petition of the ſix.—

" A petition of the ſubſcribers, electors of the borough " of Cricklade, in the county of Wilts, in behalf of them- " ſelves and others, electors of the ſaid borough, was alſo " read: ſetting forth, That, at the laſt election of a bur- " geſs to ſerve in Parliament for the ſaid borough, in the " room of William Earle, Eſq; deceaſed, Samuel Peach, " John Dewar, and Samuel Petrie, Eſquires, were candi- " dates; and that Thomas Carter, bailiff of the ſaid bo- " rough, who preſided as returning officer at the ſaid elec- " tion, during the poll, acted with the greateſt partiality " in favour of the ſaid Samuel Peach, rejecting the votes " of many who had an undoubted right to poll, and who " tendered their votes for the ſaid John Dewar, or the " ſaid Samuel Petrie; and admitting many to poll for the " ſaid Samuel Peach, who were in the ſame predicament " with thoſe who were refuſed to be admitted for the other " candidates, as well as many others who had no right to " vote at all; and thus, in a moſt arbitrary, illegal, and " unwarrantable manner, depriving great numbers of the " electors of the ſaid borough of their right and franchiſe, " which they had heretofore exerciſed for time immemo- " rial; and that by theſe, *and other undue practices*, the ſaid " Samuel Peach has been unjuſtly returned to ſerve for the " ſaid borough, though not duly elected, in defiance of " law, and groſs violation of the freedom of election; " and that the petitioners preſented a petition to the Houſe " the laſt ſeſſion of Parliament, ſetting forth theſe particu- " lars, but which was not then heard; and therefore " praying the Houſe to take the premiſes into conſiderati- " on, and to grant them ſuch relief as to the Houſe ſhall " ſeem juſt (2)."

This was the petition of the fourteen.

There is no laſt determination of the right of election in this borough; but the following entries in the Journals on that ſubject were read (A).

1 April, 1689, " Colonel Birch reports from the Com- " mittee of elections and privileges,——

" That

(1) Votes, p. 35.
(2) Votes, p. 35, 36.

"That it was *agreed* by the counſel on both ſides, that "the right of election was in the freeholders and copyhol- "ders of the borough-houſes, and leaſeholders for any "term not under three years: only the counſel for Mr. "Webb (the ſitting member) alledged, they ought to be "poſſeſſed of an eſtate in their own right, and not in right "of their wives (1)."

After ſome witneſſes had been examined, who proved the uſage in favour of perſons having eſtates in right of their wives, Webb's counſel waved their objection to them (2), and there was no queſtion left concerning the right of election.

22 February, 1695-6. "Colonel Granville reports from "the Committee of privileges and elections (3),

"That it was *agreed*, that the right of election (for "Cricklade) was in the freeholders, copyholders, and "leaſeholders, for not leſs than three years (4)."

In the years 1698, 1710, 1713, 1720, and 1722, it appears, that petitions were preſented, complaining of undue elections and returns for this borough; but there is nothing ſaid in any of them touching the right of election.

The numbers on the poll, as produced by the returning officer, were as follow:

For Peach	— —	54
For Dewar	— —	41
For Petrie	— —	6
Majority in favour of Peach over Dewar		13

The counſel for the petitioners propoſed,

I. To eſtabliſh a great many votes as legal, which had been tendered for Dewar, and had been rejected; and alſo to diſqualify others, which had been received for Peach,—ſo as to leave a clear majority for Dewar.

II. To prove ſuch miſconduct in the returning officer, as to call for a ſpecial report from the Committee.

III. To prove bribery on Peach, by his agents, ſo as to diſqualify him from being able to retain his ſeat.

Iſt Head.]

(1) Journ. vol. x. p. 72. col. 1.
(2) Journ. vol. x. p. 72. col. 2.
(3) Journ. vol. xi. p. 461. col. 1.
(4) *Ibid.* col. 2.

IſtHead.] The right of election was allowed on both ſides to be as expreſſed in the general terms of the two agreements of 1689 and 1695.

But the petitioners contended,

1. That the boundaries of the borough extend beyond the line adopted on the part of the ſitting member; and that *ſeven* houſes, for which votes had been tendered in favour of Dewar, and rejected on the ground of their being without, are within, the boundaries.

2. That it is not neceſſary that the houſes, for which votes are claimed, ſhould either be *ancient* houſes, or built on *ancient* ſcites, but that a ſufficient eſtate, in *any* houſe within the borough, gives a right to vote.

3. That leaſeholders for a term of three years, or more, determinable on a life or lives, and perſons having leaſes for that or a longer term, granted by leſſors, who have themſelves leaſes for three or more years, but determinable on a life or lives, have a right to vote.

4. That all the three claſſes of voters, *viz.* freeholders, copyholders, and leaſeholders, and muſt have reſided 40 days in the place, before the election, and muſt be *pariſhioners*.

The counſel for the ſitting member inſiſted,

1. That the boundaries of the borough are according to certain limits which they pointed out, and which exclude the ſeven houſes in queſtion,

2. That no houſes give a right to vote except *ancient* houſes, or new houſes built on *ancient* ſcites; and that what are called *new houſes* give no right to vote.

3. That no leaſeholder can vote unleſs his leaſe be for three or more years *certain*, from a leſſor who has an *abſolute* eſtate for three or more years *certain*, and not determinable on lives.

4. That reſidence of 40 days before the election is neceſſary only to qualify thoſe who claim to vote as *leaſeholders*, and is not required in *freeholders and copyholders*; and that *legal ſettlements* are not neceſſary to any voters.

Beſides the evidence brought by the petitioners to prove the four *points* which they wanted to eſtabliſh in order to make out the firſt head of their charge, they produced a great deal of other evidence to ſubſtantiate the rights of many *individual* voters who had been rejected, as claiming for ſplit tenements, as not having leaſes for three or more years,

years, or for other reaſons; and alſo to diſqualify certain voters, who had polled for the ſitting member, as not having *bona fide* eſtates, but only ſuch as were occaſional and fraudulently granted, for the purpoſe of creating votes at the election.

After the evidence for the petitioners was cloſed, the counſel for the ſitting member informed the Committee that, if they ſhould decide the *general* queſtions which have been ſtated, the parties would probably agree about the majority of votes according to their deciſions, which would render it unneceſſary for them to determine upon the votes which ſtood on *particular* grounds. That, at leaſt, if *all* the propoſitions contended for by the petitioners ſhould be eſtabliſhed by the Committee, the ſitting member would acknowledge the majority to be in favour of Dewar; and, on the other hand, if *all* the propoſitions inſiſted on by them on the part of the ſitting member ſhould be confirmed, the majority muſt be with him. That if the Committee, therefore, ſhould firſt come to ſpecial reſolutions, ſettling the right of election, they would probably abridge their own trouble, and the expence of the parties, and would alſo, by a judicial declaration of that right, in a borough where there is no laſt determination of the Houſe, aſcertain the law of the place, and prevent future conteſts.

The counſel on the other ſide concurred in deſiring to have the right of election ſpecially aſcertained, and agreed that, if *all* the points were againſt them, Peach would have a majority.

The Committee aſſented to the propoſal.

In the arguments, therefore, on both ſides, the counſel confined themſelves to obſervations on the evidence as to the general points; and, in the event, the Committee were not called upon to decide concerning any of the votes which ſtood on particular grounds. For this reaſon I have not thought it neceſſary to preſerve what was proved concerning thoſe votes; but I have been careful to ſtate very fully all the evidence that was given on the different queſtions concerning the right of election (B).—Previous, however, to the account of the evidence, it will be proper to mention what was admitted on both ſides, relative to the borough of Cricklade, *viz.*

That

That it is a borough by preſcription, but not incorporated. That the bailiff of the manor of Cricklade is the returning officer. That the bailiff and conſtables of the borough are choſen yearly at the Michaelmas court-leet, held in the borough, before the ſteward of the manor of Cricklade. That there is a ſmaller manor in the borough called the manor of Abingdon Court, which is ſubordinate to the other, and is held of the dean and chapter of Saliſbury, for 99 years determinable on lives. That there are, alſo, in the borough charity eſtates held of the feoffees of the charity, for terms determinable on lives. That the houſes in the borough are chiefly held either in freehold, in copyhold, on leaſes for 99 years determinable on lives, on leaſes for terms abſolute of three or more than three years, and on leaſes for terms of three or more years under leſſees for 99 years determinable on lives. That Mr. Neſbitt, lord of the manor, (the other member for the borough) was the active and avowed friend of Mr. Peach, and ſupported him with all his intereſt. That the appointment of the bailiff is very much in Mr. Neſbit's power.

FIRST POINT.

The ſeven houſes which were alleged, by the counſel for the petitioners, to be within the borough, and denied to be within it by the counſel for Peach, lie contiguous to each other, on the eaſt ſide of the borough, and are built in a ſtrait line fronting the ſame way. At the time of the election they were in the occupation of the following perſons: Thomas Bound, Thomas Kilmaſter, ſen. Richard Liddel, William Mabſon, John Pound, Robert Strange, and William Wakefield.

EVIDENCE

Of the witneſſes called by the counſel for the petitioners.

William Archer—ſaid, He was ſixty-five years of age; and was born in, and never a year out of Cricklade. Had heard ancient people, then dead, and particularly his father, who had been dead 40 years, ſay, that the limits of the borough extend on the eaſt to a certain ſtone, which (as well as the others mentioned afterwards) is called a Meer-ſtone; on the weſt, to another ſtone on Horſeley-down; on the ſouth, to a ſtone at a gate belonging to one Stephen Weſt; and, on the north, to a bridge called Weaver's

ver's Bridge. That he was conſtable in 1761. That Thomas Bound's houſe was built in 1732, and has always been in the family of the Bounds. That he had heard ancient people ſay it was in the borough, and has always underſtood it to be ſo. That he had always underſtood that the Bounds had voted for it, and that Thomas Bound had, but could not ſay whether he had ſeen him vote. He gave nearly the ſame account of Thomas Kilmaſter's houſe, except that he did not mention the time when it was built. He alſo ſaid the ſame as to Richard Liddel's, and added, that, 36 years ago he went with Wellbore Ellis, Eſq; to ſolicit votes, and went to that houſe. That he ſaw the poſſeſſor at the poll on that occaſion, but did not know whether he voted. He gave the ſame evidence concerning the houſes of William Mabſon, John Pound, Robert Strange, and William Wakefield, as concerning that of Liddel. He ſaid that Wakefield is the owner of the houſe, but did not live in it at the time of the election. That one Mifflin lived in it.

On his croſs-examination on this ſubject he ſaid, He never had gone in a proceſſion round the bounds himſelf, but he had heard that it had been done once or twice in his time.

John Skilling——ſaid, He was ſixty-one years of age, and had known the borough of Cricklade fifty years. That he had performed watch and ward upwards of forty years ago, and that, according to the charge given at that time, Thomas Kilmaſter's houſe was within the borough-ſtone. (☞ Kilmaſter's houſe is the laſt in the line of the 7— if it is within the boundaries the others *muſt* be ſo. That he always underſtood that the houſes of Thomas Bound, Thomas Kilmaſter, Richard Liddel, William Mabſon, John Pound, Robert Strange and William Wakefield were within the borough.

On his croſs-examination he ſaid, That he received the charge for performing watch and ward from the conſtable. That his office was the ſame with that of Watchman in London. That the conſtables are appointed at the leet, to act within the liberties of the borough. That he underſtood that their power is only within the limits of the borough, and does not extend all over the pariſh; and that the conſtable cannot ſerve a warrant in the tything of *Chelworth*, (which is contiguous to the part of the borough

ſough in queſtion) without carrying it to the tything-man —He ſaid, he had never gone the boundaries of the borough.

John Crows——ſaid, He had known the borough of Cricklade forty years. That he was born there. That, ever ſince he remembered, the ſeven houſes in queſtion were accounted to be within the borough. That, according to the charge of the conſtable in ſetting the watch, the boundary, on that ſide, is the corner of a wall below Kilmaſter's houſe. That the charge was, that they ſhould walk to the boundaries of the borough,—to that wall,—to a gate near Stephen Weſt's,—to Horſeley-down,—and to New-bridge or Weaver's-bridge—(☞ Weaver's-bridge is in the ſame ſtrait line, but a great way beyond New-bridge, northward, on the road to Cirenceſter.)

On his croſs-examination he ſaid, He believed the conſtable's power extends only to the limits of the borough. That the tything-man never ſuffers him to go beyond thoſe limits. That he could not ſay he knew any inſtance where the tything-man had taken from the conſtable a warrant which was to be executed without the boundaries of the borough. That he himſelf never ſerved any borough office *, and knew what he had ſaid only from others. That, as to the ſeven houſes, they were always reputed to give votes. That he did not remember Bound, or any one elſe, ever actually voting for his houſe. That he never knew Kilmaſter's vote rejected, till the laſt election. That he himſelf had voted at five or ſix elections, and remembered ſeveral that were conteſted. That, when he performed watch and ward, he was ordered by the conſtable to go to the places he had mentioned. That they were to walk thither along the ſtreets—That he had never gone in proceſſion round the boundaries.

John Haynes——ſaid, He was ſixty-four years of age; was born, and had always lived, at Cricklade; was conſtable two years; and had ſerved the office of bailiff. That his power as conſtable, as he always underſtood it, extended, ſouthward to a ſtone near Stephen Weſt's gate, weſtward to a ſtone near Horſeley-down, northward to Weaver's-bridge, eaſtward to the bottom of a ſtone wall leading

* He muſt have meant that he never ſerved the office of *bailiff* or *conſtable*.

leading to the river Iſis. That *theſe* he apprehended were the limits of the borough. That he never executed any warrants beyond thoſe limits. That he took the limits of the manor and of the borough to be the ſame. That he had heard ancient people ſay the boundaries were as he had mentioned. That he remembered ſix or ſeven elections, and ſeveral of them warmly conteſted, and that all the houſes within the Meer-ſtone, on the eaſt, have always been conſidered as giving a right to vote.

On his croſs-examination he ſaid, He had, when conſtable, ſerved ten or twelve proceſſes in the borough. That he had apprehended perſons within the houſes ſaid, on the part of the ſitting member, to be without the borough. That he remembered a proceſſion round the boundaries above thirty years ago. That many went round at that time, but that he did not go. That there is a bank within the borough, which is ſaid to have been thrown up during the Roman wars, but that he never underſtood it to be the boundary, and that it cuts off *part* of St. Mary's pariſh, which is deemed to be within the borough. That he always underſtood that the limits of the borough and manor are the ſame, and that the lord of the manor has no juriſdiction without the borough. That the bank, or mound, extends to within about thirty yards of the eaſtern boundary. That the ſeven houſes are without the mound. But that he remembered that, when he ſerved on the watch, the conſtable ordered him to watch to the bottom of the wall where the Meer-ſtone ſtands, and alſo to the other ſtones he mentioned. That the Meer-ſtone is ſometimes called the borough-ſtone. That the general report has always been, that the mound was a Roman encampment, but that he had never heard of any thing being dug out of it. That it does not extend, in any part, beyond the limits of the borough. That the conſtables are choſen by a jury, at the court of the lord of the manor. That the jury take a ſurvey of the borough. That he had gone with them on thoſe occaſions, and they always went to the boundaries which he had deſcribed. That he had known nuiſances, *without* the mound, preſented by the jury, as *within* the bounds of the manor,—one about the road being out of repair, about twelve years ago. That he had known perſons vote for the ſeven houſes at two conteſted elections, and never heard, till now, of their being

being rejected. That he had never known the occupiers of any of the ſeven ſerve on juries, but that he had known perſons living beyond the mound, on the *ſouth* ſide of the borough, ſerve on juries and in the office of conſtable; and that he remembered one inſtance of this ſince Mr. Neſbit was lord of the manor. That it never was cuſtomary to put perſons, who lived without the borough, on the jury, or to appoint them to any borough office. That, when he was conſtable, he always charged the watch to go to the boundaries he had mentioned.

Jonathan White,—ſaid, He was aged upwards of ſixty; had lived fifty years at Cricklade; and ſerved the office of bailiff at the election in 1761, which was conteſted; Mr. Gore, Mr. Neſbit, and Mr. Earle being candidates. A paper was ſhewn to him, which he ſaid was a copy of the poll which he took on that occaſion. He ſaid, he had then acted on this principle, that all the houſes within the borough gave good votes. That Thomas Bound, Thomas Kilmaſter, Richard Liddel, William Mabſon, John Pound, Robert Strange, and William Mifflin (for Wakefield's houſe) voted for the ſeven houſes in queſtion, and that no objections were made to them. That the general opinion always had been, that thoſe houſes gave a right to vote, as being freeholds, and within the borough. That the boundaries are, to the north, Weaver's-bridge, to the ſouth, a ſtone near Stephen Weſt's gate *, to the eaſt, a ſtone at the corner of Kilmaſter's garden, to the weſt, a place called Horſeley down. That he had ſerved the office of conſtable, but that no watch was then kept. That the ſteward of the manor has the chooſing of the bailiff.

William Giles—ſaid, He was aged ſeventy-five, and had known Cricklade ever ſince he was born. He gave the ſame account of the boundaries of the borough as the former witneſs had given, except that, on the north-ſide, he ſaid, the borough terminated at New-bridge; and that there was a ſtone there to mark the boundary. He ſaid, he had been conſtable during the rebellion in Scotland, and then gave the charge to the watch, as he had received it himſelf, *viz.* to go to the limits he had mentioned. That he had ſerved on a jury at the court leet, and that the jury went round to the ſtones and places he had mentioned, to ſee that there were no nuiſances.

George

* Some of the witneſſes called Weſt's-gate, Weſton's-gate.

George Simmonds—ſaid, He was fifty-eight years of age, and had known Cricklade upwards of fifty years. That he had ſerved the office of conſtable; and, in that capacity, had executed warrants, according to the boundaries deſcribed by William Giles, (northward only to New-Bridge) and that he had alſo watched to thoſe boundaries.

Morgan Byrt—ſaid, That the houſe, in right of which one James Vincent had voted (for the ſitting member), is *without* the mound, but had always been deemed to give a vote. That he made a map of the borough about two or three years before the election, which he had copied from the ſurveyor's plan. That, in imitation of that plan, he had in his map (which was produced) *called* the mound, the boundary of the borough, but did not know it to *be* ſo. That ſome ſaid it was, and ſome not. That it had of late been called the borough-bank; but that he had never heard it called ſo till lately. That it is thought to have been formerly a fortification. That, beſides Vincent, there were ſeveral others who voted for the ſitting member, in right of houſes without the bank; and he named ſome of them, whoſe houſes lay without it, on the north ſide of the borough, where he ſaid Mr. Neſbit had a great many houſes. That the bank is plainly to be ſeen, except where the ſtreets are.

It was proved, that ſix, of the ſeven perſons who had claimed to vote for the houſes in queſtion, were, and had been, in poſſeſſion a conſiderable time before the election; and the counſel for the petitioners admitted, that Wakefield was not in poſſeſſion at the time of the election.

EVIDENCE

Of the witneſſes called on the part of the ſitting member.

William Saunders—ſaid, He was ſeventy-four years of age; was born at Cricklade; and had lived there the greateſt part of his life, except the laſt ten or eleven years. That he had ſerved on a jury, but never went with the *annoyance jury*. That he had been intimate with Richard Byrt, grandfather to Morgan Byrt, who was upwards of ſeventy when he died, and who had given him the following account of the boundaries of the borough. That, on the ſouth ſide, by the cauſeway leading to Burton-ſtone, there is a ſtone called the borough-ſtone, which is the ſouth boundary,

boundary,—(that this had been confirmed by the witneſs's father). That, eaſtward from that ſtone, the boundary croſſes a lane, into what is called Paul's croft, and is diſtinguiſhed by a bank called the borough-bank. That then, turning northward, and including the houſe of one Townſhend, it croſſes Calcut lane, into Dennis's ground, where the bank appears again, and then runs to Abingdon Court. That, from Calcut lane, the boundary, leaving the bank, croſſes over to Hatchet green, then goes northward to New bridge, and thence to a place called Horſely down. That, from Horſely down, it goes forward about a furlong, down a lane, by the parſonage ground, which it leaves within the borough; and, laſtly, runs eaſtward, acroſs a green or common, to the ſouth ſtone. He was not clear, whether the boundary, in croſſing Calcut lane, excluded the houſes of the Stranges. (There is a houſe of John Strange in the ſame row with the ſeven in queſtion, and next to that of Robert Strange, but on the borough ſide). He ſaid, that, by the cuſtom of the borough, every inhabitant takes it in his turn, to make a liſt of the inhabitants within the borough. That Mr. Byrt had always told him, that the houſes in Calcut lane, without the line he had deſcribed, were without the borough; and that Byrt always directed the inhabitants of thoſe houſes to go to another court. That he (the witneſs) had been in court, and ſeen them ſtruck off the liſt, ſeveral times. That they had indeed been ſeveral times called to the court by the ſteward; but that it was always during the abſence of Mr. Byrt, who never allowed that they were within the borough, but ſaid they belonged to the tything of Chelworth.

On his croſs examination he ſaid, That, from Abingdon Court to New-bridge, the boundary is marked by the river. That it croſſes the river at Town-brook, near the Horſe Pool. That he had never gone the boundaries. That he never knew the men, who lived in thoſe houſes in Calcut lane which his line excludes, ſerve on juries. That they might come to the court as other people did, to hear. That he had lived in London for the laſt eleven years, and did not know the gentlemen concerned in this election. That old Mr. Byrt had great influence. That he had known him direct the ſteward to ſtrike off names from the liſt; but that the inhabitants, for the moſt part, put them

on

on again. That he never was preſent at any conteſted election. That the houſes in queſtion were built ſince an election which happened after the ſouth-ſea affair. That he believed they were built with a view to make votes. That it had been diſputed whether they were, or were not within the borough; but that the moſt general opinion was, that they were not. That the mound is, and has been, for ſeveral years, called the borough-bank; but that it is not conſidered as the boundary of the borough. That Strange's houſe was, as nearly as poſſible, *on* the borough-bank; but that, if there was any difference, it was rather more without than within it.

John Miſflin—ſaid, He was ſeventy-four years of age; and was born, and had lived many years, in Cricklade. That he had lived the laſt thirty years in London, but had been at Cricklade lately a great many times. He gave an account of the boundaries of the borough, nearly the ſame with that given by the former witneſs, but leſs diſtinct. He ſaid, he never had been conſtable, nor kept watch and ward; and that he had never gone round the boundaries. That it was forty years ſince he firſt left Cricklade; but that he had been backwards and forwards ſince; and had voted there.

Such was the evidence given on both ſides with regard to the boundaries of the borough.

SECOND POINT, *viz.*

Whether *all* houſes within the borough, the eſtates in them being ſuch as are required, give a right to vote, or only *ancient* houſes, and ſuch as are built on *ancient* ſcites.

EVIDENCE

Of the witneſſes called by the counſel for the petitioners.

William Archer (1)—ſaid, He had known owners of *new* houſes vote, and never knew them rejected, till the laſt election. That Oliver Adams's houſe, in the middle of the borough, which has not been built twenty years, Thomas Barrett's, alſo in the middle of the borough, William Fry's, built in 1720, Mary Pyke's, built about thirty-one years

(1) Supra, p. 9.

years ago, Edward Snell's, built in 1720, John Strange's, contiguous to Robert Strange's, Neville Simmond's, built twenty years ago, and John Tinſon's, built about fifty years ago, (ſeveral of which are in Calcut lane, and in the ſame row with the ſeven houſes,) have always been underſtood to give a right to vote.

On his croſs-examination, he ſaid, That, a little before ſome of thoſe houſes were built, there had been a fire; but that *that* was not the reaſon of their being built, they being ſituated at the diſtance of a furlong from the place where the fire happened. That, except on the preſent occaſion, it never had been diſputed, that thoſe houſes gave a right to vote; and that perſons had voted for them at conteſted elections.

Robert Strange—ſaid, He was ſeventy-five years of age; that he was born, and had always lived, at Cricklade; and was father to John Strange. He ſpecified the houſes mentioned in Archer's evidence, and a great many others, the proprietors of which had been rejected at the poll, on the ground of their houſes being *new* ones. He ſaid, thoſe houſes had always been conſidered as giving a right to vote; and that he had known them voted for, at ſeveral elections.

On his croſs-examination, being aſked, if he had not heard old people ſay, that only *old borough*-houſes gave a right to vote, and that the number of voters did not exceed four ſcore, he anſwered, That he had always heard, that all but *ſplit* houſes gave a right; that he never remembered the voters ſo few as four ſcore; and that, at Mr. Dunn's election, ſixty ſeven years ago, ſeven ſcore voted.

John Skilling—(1) ſaid, He had never known *new* houſes objected to, till the laſt election. That he had known them voted for at conteſted elections, as far back as forty years ago. That there was a fire at Cricklade in 1723, and that new houſes were built after it, which were always underſtood to give a right to vote. He ſpecified ſome of the houſes mentioned by Archer and Strange.

On his croſs-examination he ſaid, He had been preſent at elections where perſons voted for *new* houſes built on new ground, though they ſtood perhaps where old houſes might once have ſtood. That he had never heard old peo-

(1) Supra, p. 10.

ple ſay, it was a diſputed point whether *new* houſes entitled to vote. That he had known objections ſtarted to them before the preſent occaſion, but never knew them rejected at a poll.

On being re-examined, he ſaid, that all the houſes he had ſpecified, except Adams's, were on new ground; and that he never knew a diſtinction made between new and old ground. That he had known the ground where thoſe houſes ſtood, when it was in gardens, but that old foundations had been found in it (3).

John Crews—(4) ſaid, It had been *talked*, that there was a diſtinction between *new* and *old* houſes, as to the right of voting; but he never heard any objection made to new houſes at a poll, till now, and he had been preſent, and had voted, at five or ſix elections,——ſome of them conteſted.

John Haynes——(5) ſaid, He had never heard any objecjection made to *new* houſes before the laſt election. That he had known all the new houſes, which had been ſpecified, voted for at conteſted elections, except one, which had been built poſterior to any conteſted election except the laſt. That he never had heard any diſtinction made between *new* and *old* houſes by the inhabitants, but that it was always underſtood, that *new* as well as *old* gave a right to vote.

On his croſs-examination he ſaid, He had never heard it diſputed among old people whether *new* houſes, although not on *old* foundations, gave a right to vote. He mentioned ſeveral of the *new* houſes, which, he ſaid, he knew were not built on *old* ſcites, and for which, notwithſtanding, he had known votes received at conteſted elections.

Jonathan White—— (6) ſaid, He had never heard any diſtinction made between *old* and *new* houſes, as to the right of voting, before the laſt general election. By the copy of the poll, which he had taken, in 1761, it appeared, and it was admitted on the part of the ſitting member, that eight of the new houſes which had been mentioned by the other witneſſes, had been voted for at the election in that year.

On

(3) It appears, by Camden, and the red book of the Exchequer, that Cricklade was once a conſiderable place, and much more extenſive and populous than at preſent.

(4) Supra, p. 11. (5) Supra, p. 11. (6) Supra, p. 13.

On the part of the ſitting member, nothing was aſked of William Saunders concerning the *new* houſes.

John Mifflin—(1) ſaid, That, at the election where Mr. Wellbore Ellis and Mr. Reid were candidates, many who claimed to vote for *new* houſes were rejected, and that he was preſent when they were rejected.

On his croſs-examination he ſaid, That ſome of the votes ſo rejected were tendered for Ellis, and ſome for the oppoſite party.

THIRD POINT, *viz.*

Whether perſons having leaſes of houſes within the borough for three or more years, determinable on a life or lives, or leaſeholders for three or more years under leſſors who have eſtates for that or a longer term, but determinable on a life or lives, have a right to vote.

EVIDENCE

Of the witneſſes called on the part of the petitioners.

John Haynes—(2) ſaid, He remembered ſix or ſeven elections, of which ſome were very warmly conteſted. That there are, in Cricklade, a great many leaſes for 99 years determinable on three lives, and many for three years under thoſe for 99 years. That both the one ſort and the other have always been conſidered as giving a right to vote, and that perſons claiming to vote for them were never rejected, till the laſt election. That he had never heard them even objected to, till the laſt general election (3), though he had ſeen perſons produce leaſes of both ſorts at the poll, to prove their titles, and had ſeen them vote after their titles were ſo proved.

Jonathan White, (4) who had been returning officer in 1761,---ſaid, That, on that occaſion, when Mr. Gore, Mr.

 Neſbitt,

(1) *Supra*, p. 16.

(2) *Supra*, p. 11.

(3) There was ſome confuſion in the account given by the witneſſes of the leaſeholders rejected at the general election in 1774.

(4) *Supra*, p. 13.

Neſbitt, and Mr. Earle were candidates, no objection was made, by Neſbitt, to perſons having leaſes (either of feoffee lands, or under Dr. Heberden) of leaſes for 99 years determinable on lives. That they were received as good voters, and that he never heard any objection to them till of late. That, at the late general election, they were admitted (in general) to be good voters, and were never refuſed till this laſt election.

William Giles—(1) ſaid, He remembered elections ever ſince he was twenty years of age, and ſome of them conteſted. That he himſelf had a leaſe for 99 years determinable on lives, and had a tenant under him who had voted at ſeveral elections. That it had always been allowed, till this laſt election, that both the ſorts of leaſeholders in queſtion had as good a right to vote as any freeholders. That leſſees under Dr. Heberden, and under the feoffees, had always been reputed to have a right to vote, and were never, before, rejected.

The counſel for the ſitting member did not examine their witneſſes to this point.

FOURTH POINT, *viz.*

Whether, in order to be entitled to vote, a perſon muſt have been reſident 40 days before the election, and muſt be a pariſhioner of Cricklade; or whether, as the counſel for the ſitting member contended, reſidence of 40 days be neceſſary to leaſeholders only, and not to freeholders and copyholders, and the being a pariſhioner, in any other manner, equally unneceſſary to all the three claſſes.

EVIDENCE

On the part of the petitioners.

John Haynes—(2) ſaid, That it was always conſidered as neceſſary to every voter to be a pariſhioner, and to have been reſident 40 days.

Jonathan White.—(3) ſaid, That it was always ſuppoſed, that voters of all the three claſſes, muſt have been reſident 40 days

(1) *Supra*, p. 15.
(2) *Supra*, p. 11.
(3) *Supra*, p. 13.

40 days before the election. That he recollected one, and only one, inſtance, of a perſon having been rejected becauſe he had not reſided 40 days before the poll. That this was at the election in 1761, when he was returning officer. He ſaid, that a voter muſt be a pariſhioner, having reſided 40 days. That, if he was not a pariſhioner, he had no right to vote. That he muſt have a parochial ſettlement at Cricklade.

On his croſs-examination he ſaid, That a man renting under 10l. a year, although he ſhould have reſided 40 days, would not have a right to vote, unleſs he were a pariſhioner, and had gained a ſettlement before.

William Giles—(1) ſaid, That it is neceſſary for every voter to be a pariſhioner; and that a leſſee of leſs than 10l. a year, although he ſhould have reſided 40 days, would not be a pariſhioner.

George Symmonds—(2) ſaid, It was underſtood that voters muſt be in the actual occupation of their houſes for 40 days preceding the poll, and that they muſt be pariſhioners; that is (ſaid he) they muſt rent 10l. a year. On being aſked if he thought *that* the only way of gaining a ſettlement, he ſaid he did not know.

William Archer—(3) ſaid, It had always been the cuſtom that the voters ſhould be reſident 40 days before the election. That he himſelf had once tendered his vote, and had been rejected, becauſe he had not been reſident 40 days. That no perſons of any of the three claſſes were ever received without this qualification. That, at the laſt election which happened in the reign of George I. his father had an eſtate of 70l. a year, part freehold, part copyhold, and part leaſehold. That he lived in the pariſh, but not in the borough; and that his eſtates lay, ſome within the borough, and ſome within the pariſh. That, being aſked to vote, he conſulted the ſteward of the lord of the manor, who told him, that, to entitle himſelf to vote, he muſt reſide within the borough 40 days. On being aſked, if a man who had ſerved a ſeven years apprenticeſhip in the *pariſh*, but not in the *borough*, and who ſhould take a leaſe for three years within the borough, would have a right to vote without having

(1) *Supra*, p. 13.
(2) *Supra*, p. 14.
(3) *Supra*, p. 9.

having reſided 40 days; he ſaid he would not: And, being aſked if a man who ſhould rent a houſe of 4l. a year, and live in it for more than 40 days previous to the election, would have a right to vote; he ſaid he would have a right, *if he were a pariſhioner.*

John Skillings—(1) ſaid, It was neceſſary to be a pariſhioner of one of the two pariſhes in Cricklade, and to have reſided 40 days before the election. That he had always underſtood that freeholders, copyholders, and leaſeholders, muſt be reſident 40 days. That ſuch had always been the practice, as far as he could remember. That he remembered one or two perſons rejected, although they were pariſhioners, becauſe they had not occupied their houſes 40 days, and that the returning officer aſſigned *that* as the reaſon of his rejecting their votes. That it was ſufficient if a man's family reſided, although he himſelf ſhould be abſent on buſineſs. That, by pariſhioners, he meant perſons entitled to a ſettlement by birth, apprenticeſhip, (or ſervitude) and covenanted ſervants. That, if a perſon has ſerved a ſeven years apprenticeſhip within the borough, and has a houſe, ſtill he cannot vote without 40 days previous reſidence.

William Saunders—(2) ſaid, He had always heard that non-reſidents have no right to vote, and that both freeholders and copyholders muſt be in the occupation of their premiſes. That if they were not, they had always been conſidered as illegal voters. That non-reſident freeholders were indeed admitted at the general election, and at the late one. That Mr. Neſbitt firſt began to poll them, and that they were objected to by the oppoſite party; but were afterwards received to vote on both ſides. That before the laſt general election, he never knew a man allowed to vote who was not a pariſhioner, and in the occupation of the premiſes for which he claimed. That he believed there had been inſtances of freeholders voting without having been reſident 40 days. (This he ſaid *generally*; but it would ſeem that he *meant* to ſay only, that ſuch inſtances had happened at the laſt general election; for, being afterwards

(1) *Supra*, p. 10.

(2) Not the ſame with the perſon of that name who was called on the part of the ſitting member. *Supra*, p. 14.

wards aſked if he had ever known inſtances of perſons being admitted to vote who had not been in poſſeſſion 40 days before the election, he anſwered, "Yes; *at the general election before the laſt election.*")

Morgan Byrt—(1) ſaid, He never knew any body vote without being in poſſeſſion, till the laſt general election. That a freeholder cannot vote for his own houſe without being in poſſeſſion of it.

EVIDENCE

On the part of the ſitting member.

William Saunders—(2) ſaid, That a freeholder of a houſe had a right to vote for it, provided he had not conveyed it to another, even although he did not live in it. That he had known perſons vote who had not been at Cricklade for years. That he recollected one Thomas Hindar's having voted as a freeholder, without any objection being made to him, although he had been abſent twenty years. That he believed a copyholder or a leaſeholder muſt be reſident; but he never heard how long a reſidence was neceſſary.

John Mifflin—(3) ſaid, He had once underſtood what conſtituted the right of voting, but that having been long abſent from Cricklade, he could not now give any good account of the matter. He ſeemed to ſay, that he conceived that freeholders, though non-reſident, might vote.

IId Head.] On the ſecond head, a great deal of evidence was produced on the part of the petitioners, to ſhow, That the returning officer had acted with groſs partiality towards the ſitting member. That he had determined the diſputed points, relative to the right of election, in the manner which he thought moſt likely to give a majority to Mr. Peach. That he had not even adhered to the rules which he himſelf had laid down, but had admitted votes for Peach, which were in the ſame circumſtances with others tendered for Dewar which he rejected. That he followed the directions of the counſel who attended for Peach.

(He

(1) *Supra*, p. 14.
(2) *Supra*, p. 14.
(3) *Supra*, p. 16.

(He was the ſame returning officer who had preſided at the election immediately preceding (1), and at the laſt general election.)

IIId Head.] The counſel for the ſitting member objected to any evidence being received on this head. They contended, That bribery was not alledged in any of the petitions before the Committee. The words, "*other undue, corrupt, and illegal practices*," which were contained in the pettion of the ſix electors (2), were, they ſaid, too general and indefinite, to entitle the petitioner to go into the proof of ſo ſpecial and weighty a charge as that of bribery. That it could not be ſuppoſed, that thoſe words contained a ſufficient notice to the ſitting member, for him to prepare himſelf againſt that particular charge; and therefore, that it would be unjuſt to put him on his trial before the Committee for that offence. That the words in queſtion, being placed at the end of the petition, could not be underſtood to imply any thing, but were to be conſidered as mere words of courſe, like the "*et alia enormia fecit*," ("*and other wrongs did*") in a declaration, in account of treſpaſs.

On the other ſide, it was inſiſted, That arguments, drawn from the narrow and technical rules of ſpecial pleading, ought not to be introduced into election cauſes, or applied to the conſtruction of petitions. That the words "*corrupt practices*" particularly point at bribery, which is the ſort of corruption moſt commonly made uſe of at elections. That, in the *body* of the ſtatute of 2 Geo. II. which, in the *title*, is called an act for more effectually preventing *bribery* and corruption in the election of members to ſerve in Parliament, the term bribery never occurs; and that the preamble begins thus:—"Whereas it is found "by experience, that the laws in being have not been "ſufficient to prevent *corrupt and illegal practices* in the elec- "tion of members to ſerve to Parliament; for remedy, "therefore, of ſo great an evil, &c. (3)." That the words "*corrupt and illegal practices*," therefore, (the allegation of the petition,) are ſo peculiarly expreſſive of bribery, that they

(1) *Vide ſupra*, vol. i. Caſe of Cricklade, p. 143, to 152.
(2) *Supra*, p. 5.
(3) 2 Geo. II. c. 24. § 1.

they are the words by which the legiſlature has choſen to expreſs it, in a law made directly againſt that offence.

The court being cleared, the Committee, after deliberation, came to the following reſolution.

Reſolved, "That the Committee are of opinion, that the "counſel for the petitioners are at liberty to enter into the "proof of bribery by Samuel Peach, Eſq; it being com-"prehended in [the words] *corrupt practices* alledged in the "petition."

Upon this, the evidence was gone into; and other evidence to contradict the charge was afterwards produced on the part of Mr. Peach.

On the evidence concerning the different points which were included under the Iſt Head, the counſel for the petitioners obſerved as follows:

1. The evidence on the firſt point proves, in the compleſteſt manner, that the ſeven houſes, which were held by the returning officer *not* to be within the limits of the borough, *are* within thoſe limits. It is true, that ſome of the witneſſes called on the part of the petitioners carry the boundary farther than others, towards the north, but they all agree in making it include the ſeven houſes. Theſe witneſſes are old men, who by ſerving on juries, by performing watch and ward, and by acting as conſtables, have had the beſt opportunities of knowing the extent of the borough. It is alſo proved, that the houſes in queſtion have always been voted for, till the laſt election. To contradict the witneſſes of the petitioners, on this, and the other points, relating to the right of election, the only evidence which the lord of the manor, after the reſearches of a year and a half, has been able to produce, is that of two men, who have not for a long time reſided in Cricklade. The mound, which, in a map copied from one prepared by the orders of the lord of the manor, is called the boundary of the borough, has been proved never to have been thought ſo, but to have been all along looked upon as the remains of a Roman encampment. Indeed, on the part of the ſitting member, it has been made the boundary *only* where it ſerved to exclude the ſeven houſes. Had it been followed quite round the borough, it would alſo have cut off eleven votes from the ſitting member *; but, wherever *that* was

* This was admitted.

was neceſſary to ſerve his purpoſe, his witneſſes have extended the limits beyond it.

2. The evidence, on the ſecond point, is equally ſtrong and unimpeached. Unleſs it could be contended that this is a burgage-tenure borough (to which it does not bear any reſemblance), the idea of *ancient* ſcites and *ancient* houſes muſt be relinquiſhed. If the aſſertion of the ſitting member on this point were well founded, the number of houſes and ſcites, to which the right of voting is annexed, would be fixed and certain, and would not have varied, as it has done, at different periods of time.

3. On the third point, the uſage is as clearly proved as on the two former; and the witneſſes called by the counſel for the ſitting member have ſaid nothing to contradict it. And,

4. On the fourth point, all the witneſſes on the part of the petitioners agree, that a reſidence of 40 days is neceſſary, to voters of *all the three claſſes*. With regard, indeed, to the neceſſity of having a parochial ſettlement, over and above the 40 days reſidence, the evidence is not ſo clear and ſatisfactory. But this will not appear ſurpriſing, when it is conſidered, that all freeholders, copyholders, and leſſees of more than ten pounds a year, of one or other of which claſſes the greater part of the electors is compoſed, need only a reſidence of 40 days to gain a ſettlement. Concerning *them* no queſtion about ſettlement could ever ariſe, becauſe they were neceſſarily ſettled before they could be otherwiſe entitled to vote. It is only to leſſees of leſs than ten pounds a year, that ſomething more than a 40 days reſidence is neceſſary to gain a ſettlement. Hence inſtances of objections for want of a ſettlement, to perſons who had reſided 40 days, muſt have been rare, and it is natural that there ſhould not be much evidence on this matter.

The counſel for the ſitting member ſaid,

1. On the firſt point, That there was a contrariety in the evidence, produced on the other ſide, concerning the limits of the borough. That, to ſhew the mound to have been a Roman encampment was no anſwer to any arguments which proved it to be, in ſome places, the boundary; for that, in founding boroughs, ſuch veſtiges of encampments had often been adopted as their boundary.

2. On

2. On the ſecond point they ſaid, That although all boroughs, in which the right of election is annexed to houſes, have, probably, in their original, been burgage-tenure boroughs, yet, alterations in that reſpect had, by degrees, crept into many of them, and into this of Cricklade in particular. That, now, leaſeholders for lives are allowed to vote, which is contrary to the nature of burgage-tenure boroughs. That it appeared, however, by the words of the agreement in 1689 (1), that this borough retained, in a great meaſure, what muſt be ſuppoſed to have been the ancient right of election. That the right is there declared to be only in the freeholders, copyholders, and leaſeholders, of *borough-houſes*. That by the expreſſion "*borough-houſes*" muſt have been meant the ancient borough-houſes exiſting at that time; and that, as the right of voting is by preſcription, thoſe houſes only can be conſidered as *ancient borough-houſes* which are built on foundations where houſes ſtood beyond the memory of man (C). That, as the right is agreed to be in houſes only, and not in land on which there are no houſes, it is natural that the number of voters ſhould be different at different times.

3. On the third point they argued, That, by a fair legal conſtruction of the account of the uſage contained in the agreements of 1689 (2) and 1695-6 (3), it muſt be underſtood that perſons claiming to vote as leaſeholders, muſt have an eſtate *certain* for at leaſt three years. That a tenant for a term determinable on lives cannot be ſaid to have ſuch a certain eſtate, becauſe his intereſt may be at an end in leſs than three years. That a lawyer, when he hears of a leaſe for three years, always underſtands that ſuch a leaſe is meant as *muſt* continue for that term.

4. As to the fourth point they ſaid, That, from the agreements, it was evident that reſidence was not neceſſary to freeholders and copyholders. That nothing is ſaid in them as to reſidence, and therefore it muſt be preſumed not to be neceſſary, becauſe, in boroughs where the right of election is in freeholders, no ſuch qualification is in general required. That even the witneſſes on the part of the petitioners had not ſaid that they recollected any inſtances

(1) *Supra*, p. 6.
(2) *Supra*, *ibid.*
(3) *Supra*, p. 7.

ſtances of freeholders, or copyholders, having been rejected for non-reſidence; and that, in what they had ſaid concerning the neceſſity of reſidence, the Committee would not think them worthy of unreſerved credit, when it was conſidered that it was their intereſt, as voters, to confine the right to perſons in their own circumſtances. That a ſtatutory parochial ſettlement could ſtill leſs be thought neceſſary, becauſe here the right of voting is *preſcriptive*, and muſt be underſtood by the Committee to have been fixed long before the ſtatutes concerning ſettlements (C) were made. That, in the agreements of 1689 and 1695-6, no mention is made of ſettlements any more than of reſidence. That thoſe agreements are a ſort of written traditional evidence of the right, and much more to be relied on than the looſe hear-ſay of old perſons; and that, if a ſettlement were a neceſſary qualification, it muſt have been taken notice of either in them, or in ſome of the ſubſequent petitions complaining of undue elections for this borough. That there is no inſtance of any borough with a preſcriptive right of election, where a parochial ſettlement is a neceſſary qualification, or where the right of voting is made to depend on the poor laws, unleſs it has been ſo eſtabliſhed by a laſt determination of the Houſe (C).

In reply, the counſel for the petitioners inſiſted,

That, as this was allowed not to be a burgage-tenure borough, the words "*borough houſes*" in the agreement of 1689, could only mean houſes within the borough; and that, in the agreement of 1695-6, thoſe words were not found. That the right of perſons having leaſes for three or more years, determinable on lives, reſted, like all the other points, on uſage, and was as ſtrongly ſupported by the evidence. That leaſes, for a ſhorter term than three years, muſt have been excepted, from the ſuſpicion to which they were liable of *occaſionality*. That a leaſe for three years, determinable on three lives, had as little chance of being occaſional, as one for three years not ſubject to ſuch contingent determination; and that a leaſe for a longer term, determinable on lives, although there was a *poſſibility* of its expiring *before* the end of three years, yet, from the *probability* of its continuing *longer*, might be conſidered as giving a better intereſt, and was therefore leſs likely to be occaſional. That what was ſaid of reſidence

not

not being mentioned in the agreements, as a neceſſary qualification, would apply to leaſeholders, as well as to freeholders and copyholders; and yet the counſel for the ſitting member admitted, that, to leaſeholders, reſidence was neceſſary. That, as to parochial ſettlements, though they have been regulated and modified by the ſtatutes concerning the poor, yet many were of opinion that they exiſted at common law independent of the ſtatutes, before the reign of Richard the IId, and that ſome even carried them as far back as the time of the Saxons.

The Court being cleared, the Committee, after deliberation, came to the two following reſolutions, which they communicated by their Chairman to the counſel:

Reſolved, "That it is the opinion of this Committee, "that the right of voting for members to ſerve in Parliament, for the borough of Cricklade, in the county of "Wilts, is, in the inhabitants poſſeſſing houſes within "the ſaid borough, who are freeholders, copyholders, or "leaſeholders for any term not leſs than three years, or "for any ſuch term, or greater term, determinable on "life or lives; ſuch freeholder, copyholder, or leaſeholder having been in the occupation of the houſe "for which he may claim to vote 40 days preceding any "election."

Reſolved, "That it is the opinion of this Committee, "that the houſes which were in the occupation of Thomas Bound, Thomas Kilmaſter, ſenior, Richard Liddel, William Mabſon, John Pound, and Robert Strange, "at the laſt election of a member to ſerve in Parliament "for the borough of Cricklade, in the county of Wilts, "are within the boundary of the ſaid borough." (B)

☞ It follows, from this laſt reſolution, that the houſe of William Wakefield alſo is within the boundary of the borough, ſince it is ſituated in the ſame row with the others; and to the weſt of Kilmaſter's. It probably was not ſpecified, becauſe Wakefield, who tendered his vote for it, was not the occupier, and, therefore, according to the firſt reſolution, had not a right to vote.

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The counſel for the ſitting member, when they were acquainted with theſe two reſolutions, informed the Committee that they would give them no further trouble.

In the courſe of the cauſe the following points of evidence were determined.

1. When William Archer was aſked, Whether he had known perſons admitted to vote for *new houſes*, the counſel for the ſitting member objected to the queſtion.

They ſaid, That the polls were better evidence of this fact, and therefore no other evidence could be received concerning it, until it was proved, either that no polls had been taken, or that they were loſt.

To this it was anſwered, that there was no proof of any polls having exiſted. That a poll is no neceſſary part of an election, and that, when one is taken, it is no record, and is ſeldom preſerved.

In reply, it was ſaid, That a poll, though not a record, is a judicial inſtrument. That it is not a ſufficient anſwer to the objection to ſay, that there is no law for preſerving polls, for that neither is there any law for the preſervation of private deeds and writings, and yet, till it has been ſhewn that they are loſt, no parole evidence can be received concerning the matters which they would prove. That, although a poll is not abſolutely neceſſary to an election, it is to be preſumed, until the contrary is proved, that a poll was taken; and that the petitioners, in order to entitle themſelves to the evidence now offered, ſhould have given notice to produce the polls, and thereby ſhewn that they had done what lay in their power to get at the beſt evidence.

The Committee determined that the evidence was admiſſible.

2. George Simmonds being aſked as to the point of reſidence and ſettlements, and having declared that he was a voter, and had a ſettlement, the counſel for the ſitting member objected to his evidence on that point.

They ſaid, He was intereſted to narrow the right of election, and confine it to perſons of the ſame deſcription with himſelf.

It was ſaid on the other ſide, That it had always been the practice, where a witneſs's right to vote was admitted on all hands, that he ſhould be received to prove any thing relative

relative to the right of election; and that the value of a vote, in the eye of the law and the conſtitution, is as great where there are a thouſand concurring votes, as where there are only an hundred.

The Committee, after deliberation among themſelves, informed the counſel, that they did not think the witneſs ſo intereſted as to be incapacitated from giving evidence (1).

3. Before the counſel on both ſides had agreed that the ſenſe of the Committee ſhould be taken on the general points of the right of election, a great deal of evidence was produced to prove the titles of individual voters; and, with regard to theſe, the following general queſtion was argued and determined.

The queſtion was, Whether, in order to ſubſtantiate a vote, it was neceſſary to produce deeds to the Committee which had been produced at the poll, and admitted by the returning officer.

The reſolution of the Committee was as follows:

Reſolved, "That, any deed upon which a voter claims "to vote, ſuch vote being objected to by the parties, muſt "be produced to the Committee, or proof given that ſuch "deed is unduly withheld or loſt, before the Committee "can admit other evidence, as ſufficient to ſubſtantiate "the vote."

4. The *poſſeſſion* of ſeveral voters (whoſe *title* to vote as belonging to any of the three claſſes was denied, and who had tendered their votes for Dewar) was proved. This was *primâ facie* evidence of their being freeholders; but it appeared, by a check-book which had been produced on the part of the petitioners, that thoſe very perſons had claimed as leaſeholders, for terms determinable on lives, and that they had been rejected, on the ground of that title being inſufficient to give a right to vote.

On the part of the petitioners, it was contended, That, if their being freeholders was controverted on the ground of their having *claimed* as leaſeholders, it was incumbent on the ſitting member to produce the leaſes.

The counſel for the ſitting member inſiſted, That, as it appeared from the check-book, which the counſel for the petitioners themſelves had delivered in as evidence, that the perſons in queſtion had claimed as leaſeholders, it was now

(1) *Vide ſupra*, vol. 1. p. 174.

now incumbent on *them* to produce the leaſes, to ſhew that thoſe men had the titles under which they had claimed to vote. That it is the known practice in ejectments, (to which a trial before a Committee, whether a man really has the eſtate by which he claims to be a voter, may be very properly compared) that, if the plaintiff's witneſſes, after having proved his poſſeſſion, ſhew, on croſs-examination, that he claimed by a deed, the plaintiff muſt produce and give oyer of the deed.

There was no expreſs determination on this queſtion; but the counſel ſeemed to underſtand the ſenſe of the Committee to be, that the *petitioners* muſt produce the leaſes; and accordingly, the counſel for the petitioners, (having, by the direction of the Committee, proceeded, during the reſt of that day, in proving the poſſeſſion of other voters in the ſame predicament,) on a ſubſequent day produced the leaſes; which amounted to a waver, on their part, of the point in diſpute.

5. The leaſe of one William Little was produced, to ſhew that he was a leaſeholder for three years. It was atteſted by a ſubſcribing witneſs, but Morgan Byrt, who had *not* ſubſcribed it, was called to prove the execution, as having been preſent on the occaſion. It was not alledged that the ſubſcribing witneſs was either dead, or kept out of the way by the oppoſite party.

The counſel for the ſitting member objected to Byrt's being examined on this matter, his teſtimony not being the beſt evidence.

To this it was anſwered, That, though witneſſes are neceſſary to the execution of deeds, yet the ſubſcription of thoſe witneſſes is not neceſſary; for that a deed is perfectly valid, although not ſubſcribed, provided there is teſtimony to prove the execution. That this being the caſe, any witneſs who ſaw a deed executed is as competent to prove the execution, as he who ſubſcribed it; and that the main uſe of ſubſcription by the witneſſes is, to ſerve as a memorandum, or indication, to point out who the perſons are, who can prove the execution.

In reply, it was ſaid, That although, when a deed is not ſubſcribed by any witneſs, a perſon who ſaw the execution may be competent to prove it, yet, when it is ſubſcribed by a witneſs, the caſe is very different; for that then, if the

ſubſcribing

ſubſcribing witneſs is not called, it muſt be preſumed that the party neglecting to call him is afraid of his evidence.

The court being cleared, the Committee deliberated for ſome time; after which, the counſel being called in were aſked, whether a witneſs to the execution of a deed, might not ſign it at a time ſubſequent to the execution. (In the mean time, while the counſel were out, Byrt had actually ſigned the leaſe.) It was agreed, on the part of the ſitting member, that a witneſs might ſign ſubſequent to the execution, and that no line had been drawn by the law, as to the length of time after the execution, within which he might ſubſcribe. On this, the court being cleared again, the Committee, after deliberation, came to the following reſolution, which they communicated to the counſel:

Reſolved, "That it is the opinion of the Committee, "that Morgan Byrt is at liberty to give evidence of the ex- "ecution of the leaſe."

6. Thomas Skilling having been called, on the part of the petitioners, to prove bribery by Mr. Peach, it appeared, that he had ſigned the petition of the 16 voters. On this ground his evidence was objected to as inadmiſſible. But, as the petition which he had ſigned was not that which, according to the reſolution of the Committee, contained the charge of bribery, the objection was over-ruled.

7. Henry Beale was called by the counſel for the ſitting member, to prove, that non-reſident freeholders have a right to vote. It appeared, that he himſelf was a non-reſident freeholder. On this, his evidence was objected to, as being incompetent to prove his own title.

It was obſerved, That this was a very different caſe from that of George Simmonds, for that *his* right to vote was admitted (1). That it might reaſonably and properly be held, that a voter, with whom a great number of others concur, has as high a franchiſe, as one who has a ſmaller number joined with him, and, of conſequence, that he is not intereſted in leſſening the number: But that, where the queſtion is, whether perſons of a certain deſcription have a right to vote or not, it could never be maintained, that a man, whoſe *only* claim is, that he is of that deſcription, has no intereſt in ſaying that they have a right.

The Committee reſolved not to admit the evidence.

(1) *Supra*, p. 30.

On Monday, the 19th of February, (the ſame day on which the counſel had finiſhed their arguments) the Committee, by their Chairman, informed the Houſe, that they had determined,

That John Dewar, Eſquire, was duly elected, and ought to have been returned (1).

They made no ſpecial report (2)

(1) Votes, p. 339.
(2) *Vide ſupra*, vol. i. p. 16.

NOTES

NOTES

ON THE SECOND CASE OF

CRICKLADE.

PAGE 5. (A.) The counſel did not, on either ſide, take notice of a prior caſe concerning this borough, where there was a ſimilar agreement, *viz.* 10th June 1685. "Sir Chr. Muſ-"grave reports (concerning the election for Cricklade);

"That it was agreed by the counſel on all ſides, That the "right of election for the borough of Cricklade, is in the free-"holders, copyholders, and leaſeholders for three years." Journals, vol. ix. p. 732. col. 1.

It is obſervable, that the words, "*borough houſes*," are not in this agreement.

P. 8. 29. (B) I had occaſion to obſerve, in the introduction to this collection, (*ſupra*, vol. i. p. 16.) that unleſs the deciſions of former Committees, on the right of election in maiden-boroughs, ſhall be conſidered by ſubſequent Committees, as of at leaſt equal authority with adjudged points in the courts of Weſtminſter-hall, all the advantages attending the proviſion of 2 Geo. 2. cap. 24. for making laſt determinations final, will probably be loſt, and the intention of the legiſlature entirely fruſtrated, with regard to ſuch boroughs, by the eſtabliſhment of the new judicature. Some have indeed thought that, to prevent this inconvenience, the ſtatute of 10 Geo. III. ſhould have enacted, that reſolutions of Committees, on the right of election, ſhould have the ſame *concluſive* force as thoſe of the houſe formerly had by virtue of the act of 2 Geo. II. I own I am not of that opinion. Nothing but the groſs and repeated contrarieties in the deciſion of the Houſe, previous to the paſſing of that ſtatute, would have juſtified the clauſe rendering laſt determinations final. The

meaning of parliament was clearly this: —— There will be infinitely *leſs* inconvenience from making the laſt determination of the Houſe unalterable, and as binding as an act of Parliament, let ſuch determination be ever ſo groſs, and contrary to evidence, than is now experienced from the confuſion and perpetual litigation, occaſioned by the jarring deciſions which ſucceed one another, every time the right of election in the ſame borough comes to be diſputed. The ground, therefore, for making this law being the acknowledged caprice or corruption are not, and I hope never will be, imputable to them. The proper medium undoubtedly is, that deciſions of Committees, if formed on mature deliberation, ſhould have equal weight, not with an act of Parliament (as laſt determinations have), but with judgments of the courts of common law on queſtions competent for them to decide.

The preſent caſe was the firſt, ſince the 10th of Geo. III. in which the general right of election in a maiden-borough, came fully before a Committee. Hence, when the trial came on, it appeared to me of great conſequence, that the general points ſhould be well conſidered, and the completeſt evidence of the uſage produced. This was done; and, to ſatisfy thoſe who may read the account of it that the reſolutions were not formed till ſuch evidence had been laid before the Committee, I thought it very eſſential to ſtate every circumſtance of the proof on the different points as ſeparately ſworn to by *all* the witneſſes, as well as the ages of each, and their opportunities of knowing the fact of which they gave teſtimony. —— It is almoſt unneceſſary to inform the reader, that, on the trial each witneſs was examined at once to all the four queſtions; and that I have ſeparated and arranged their evidence under each different queſtion for the ſake of method and perſpicuity.

P. 28. (C) I ſhall take this opportunity of concluding what has occurred to me on a ſubject, which, as I conceive, merits particular attention, and which I have already had occaſion to treat of, in a former note (Caſe of Peterborough, Note (B) *ſupra*, vol. iii. p. 62, 63). The right of election in every borough muſt be conſidered as depending—on an act of Parliament,—on a ſubſiſting charter,—on uſage,—or on a laſt determination of the Houſe of Commons; and, in ſpeculation, we muſt conſider determinations of the Houſe of Commons as having been formed on evidence of the uſage, and containing only a declaration of ſuch uſage. But it is a great queſtion, whether an uſage ſufficient to eſtabliſh a right of election, muſt, like what is neceſſary to eſtabliſh other perſcriptive rights, go beyond the

the time of legal memory. The Committees which ſat in the reigns of Jac. I. and Car. I ſeem to have held that a right of election, varying from the common law right (whatever that is), could only be ſupported by "preſcription, and a conſtant uſage beyond all memory." *Vide* Glanv. Reports, and the caſe of Boſton, 8 May, 1628, (cited *ſupra*, vol. ii. p. 142.) The ſame doctrine was relied on in many of the other caſes contained in theſe volumes, as well as in this of Cricklade; *vide*, particularly, Caſe of Poole, (*ſupra*, vol. iii.) Yet it is moſt certain, that there are numerous inſtances of boroughs, where the right of election, although depending neither on ſtatute nor charter, but on uſage, is, however, ſuch, as *muſt* have had its commencement long after the time of legal memory. If the payment of the poor tax, under the ſtatute of queen Elizabeth, is neceſſary to entitle a perſon to vote in a ſcot and lot borough, (*vide ſupra*, Caſe of Peterborough, p. 60. Note (B), all ſuch boroughs are inſtances of what has been juſt aſſerted. It is not enough to ſay, that there are no rights of election which depend on the poor-laws, unleſs ſuch as are ſettled by determinations of the Houſe, (*ſupra*, p. 28.); for, as has been already obſerved, thoſe determinations muſt, in theory, be looked upon to have been meer declarations of prior rights proved by evidence. But the fact is not true. In Taunton, the laſt determination ſays nothing of certificate-men; yet it was agreed on both ſides, in the late caſe of that borough, that ſuch men are diſqualified from voting there (*ſupra*, vol. i. p. 181). This uſage cannot be older than the introduction of certificates, by the ſtatute of 8 and 9 Will. III. cap. 30. There is no determination of the Houſe of the right of election in the borough of Ivelcheſter; yet, there, a legal *ſettlement*, (by which is clearly meant, a ſettlement under 13 and 14 Car. II. cap. 12. and the ſubſequent acts on the ſubject,) is a neceſſary qualification (*ſupra*, vol. iii. p. 74). But what ſeems to put this matter beyond a doubt, is this: In many cities and towns, which are counties in themſelves, the right of election (depending upon uſage) is in the freeholders of 40 ſhillings a year. Is it poſſible ſeriouſly to believe, that this right of election exiſted before the ſtat. of 8 Hen. VI. cap. 7. by which a 40 ſhillings freehold was made the qualification of voters for knights of the ſhire; or that it had any other origin than the analogy which was ſuppoſed to be between ſuch places and porper counties, and a miſtaken notion founded thereon, that the ſtatute extended to them? I have ſhown elſewhere (*infra*, Caſe of Southampton, Note (H)), that, in a return of 14 Hen. IV. not many years before the ſtatute of 8 Hen. VI. paſſed, the members for Briſtol, then become a county corporate, are denominated "*milites*" Now, this right of election in counties corporate, which muſt have had its commencement far with-

in the time of legal memory, is recognized by the legiſlature itſelf, in the ſtatute of 19 Geo. II. cap. 28. by which the proviſions of 18 Geo. II. cap. 18. againſt occaſional freeholders in counties at large, are extended to cities and towns which are counties in themſelves, and "*in which perſons have a right to* "*vote, for electing members* [to ſerve in Parliament] *for and* "*in reſpect of freehold lands, tenements, or hereditaments, of the* "*yearly value of forty ſhillings.*"

THE

XXXIII.

THE

CASE

Of the

TOWN and COUNTY of the TOWN,

OF

SOUTHAMPTON.

The Committee was choſen on Friday, the 9th of February, and conſiſted of the following Gentlemen:

James Grenville, Jun. Eſq; Chairman.	Members for	Buckingham.
John Adams, Eſq;		Carmarthen.
Richard Benyon, Eſq;		Peterborough.
Thomas Dummer, Eſq;		Wendover.
Sir John Palmer, Bart.		Leiceſterſhire.
Richard Hopkins, Eſq;		Dartmouth.
Edward Phelips, Eſq;		Somerſetſhire.
Aſsheton Curzon, Eſq;		Clitheroe.
Benjamin Allen, Eſq;		Bridgewater.
Anthony Eyre, Eſq;		Boroughbridge.
Richard Combe, Eſq;		Aldborough, Suffolk.
Iſaac Martin Rebow, Eſq;		Colcheſter.
Edward Eliot, Eſq;		Cornwall.
NOMINEES. *Of the Petitioners.*		
Sir George Yonge, Bart.		Honiton.
Of the Sitting Member.		
John Moreton, Eſq;		Wigan.

PETITIONERS.

Certain Inhabitants of the Town of Southampton, in the Intereſt of Lord Charles Montagu.

Sitting Member.

John Fleming, Eſq;

COUNSEL.

For the Petitioners.

Mr. Mansfield, Mr. Hardinge.

For the Sitting Member.

Mr. Lee, Mr. Elliot.

THE

THE CASE OF THE TOWN, AND COUNTY OF THE TOWN OF SOUTHAMPTON.

ON Saturday, the 10th of February, the Committee being met, the petition was ready, and was as follows (A):

" To the Honourable the Commons of Great Britain in " Parliament assembled.

" The humble petition of many of the inhabitants of the " town of Southampton, having a right to vote at the " election of burgesses to serve in Parliament for the said " town, on behalf of themselves and others.

" Sheweth,

" That your petitioners beg leave to represent to this " Honourable House, that though the regulation and " government of the said town of Southampton is in " the mayor and corporation, yet the right of election, or " chooſing of burgesses to serve in Parliament for the said " town, is vested in the inhabitants paying scot and lot.

" That the Honourable Charles Montagu, commonly " called Lord Charles Montagu, the Right Hon. Hans Stan- " lay, and John Fleming, Esq; offered themselves can- " didates at the last election of burgesses to represent the " said

" ſaid town in Parliament, and Mr. Stanley and Mr. " Fleming were returned as duly elected.

" That though the town of Southampton is governed " by a mayor, bailiffs, and burgeſſes, and has a ſheriff of " its own; and the ſheriff of Hampſhire, or county of " Southampton, has no office to execute within the ſaid " town; yet it has been uſual, time immemorial, for per- " ſons having freeholds within the ſaid town to vote, in " right of ſuch freeholds, for knights of the ſhire or county " at large; and one battalion of the militia of Hampſhire, " or county at large, is annually trained and exerciſed with- " in the town of Southampton, which ſeems to imply, that " the ſaid town is ſtill a part of the county at large, and " not totally diſtinct or independent of the ſame.

" That the ſaid Mr. Fleming, when he offered him- " ſelf a candidate, and at the time he was returned as a " burgeſs to repreſent the ſaid town in Parliament, was " ſheriff of Hampſhire, or the county of Southampton; " and your petitioners are informed, that all ſheriffs are " diſabled from being elected, not only by an ancient " reſolution of this Honourable Houſe (1), but by the ex- " preſs letter of his Majeſty's moſt gracious writ or ſum- " mons directed to the ſheriffs; in which your petition- " ers beg leave to obſerve are the following remarkable " words: " *Willing, nevertheleſs, that neither you, nor any* " *other ſheriff of this our ſaid kingdom, be in any wiſe* " *elected.*"

" Your petitioners, therefore, think themſelves much " aggrieved, and apprehend that the ſaid election and re- " turn (ſo far as reſpects the ſaid Mr. Fleming) is an " undue election and return, and flatter themſelves that " the ſame will be deemed by this Honourable Houſe null " and void; and humbly hope that the Honourable " Charles Montagu, commonly called Lord Charles " Montagu, will be permitted to ſit in this Honourable " Houſe, as one of the burgeſſes for the ſaid town of South- " ampton, in the room of the ſaid Mr. Fleming.

" Your petitioners, therefore, humbly pray, that they " may be heard by their counſel, and have ſuch other " relief in the premiſes as this Honourable Houſe ſhall " think proper."

It

(1) *Quære?*

It was admitted that Mr. Fleming was ſheriff of Hampſhire at the time of his election; that the town of Southampton is a county in itſelf; that there is a ſheriff of the town to whom the writ of election is ſent, and who, in conſequence of the writ, iſſues his precept to the mayor and two bailiffs, they being the returning officers, according to the following reſolution of the Houſe.

3 April, 1735, Reſolved, "That the mayor and bailiffs "of the town, and county of the town, of Southampton, "are the returning officers (B) for the ſaid town and "county (1)."

☞ The counſel for the petitioners informed the Committee, that they did not mean to raiſe any queſtion concerning the right of election, and that they admitted that the majority of legal votes was in favour of Mr. Fleming.

The laſt determination, therefore, was not read.—As, however, according to what was held, in the caſe of Petersfield (2), to be the regular practice, *that* ought to have been done, I have here inſerted it.

17 March, 1695-6, Reſolved, "That the out-living "burgeſſes, as well as the burgeſſes inhabitants, and other "inhabitants, paying ſcot and lot, have a right to vote "for electing members to ſerve in Parliament for the "town, and county of the town, of Southampton (3)."

The counſel for the petitioners contended,

That Mr. Fleming, having been ſheriff for Hampſhire at the time of the election, was ineligible to ſerve in Parliament for the town of Southampton; and that, under the circumſtances of the caſe, the votes given for him were thrown away, and that Lord Charles Montagu ought to be declared duly elected.

☞ The reader muſt have obſerved already, that this caſe differs from that of Abingdon, and, as the event was alſo different, and the point concerning the eligibility of ſheriffs was, on this occaſion, very thoroughly inveſtigated, I think it neceſſary to ſtate the arguments uſed on both ſides of the queſtion at ſome length, although they were, in general, built on the ſame authorities and precedents, with thoſe reported in the hiſtory of the caſe of Abingdon.

COUN-

(1) Journ. vol. xxii. p. 445, col. 1. p. 449. col. 1.
(2) *Supra*, vol. iii. p. 6.
(3) Journ. vol. xi. p. 519. col. 1.

COUNSEL for the petitioners,

The clauſe of "*Nolumus*," in the parliamentary writ, ſeveral ſtatutes, and every precedent, from the reign of Edw. I. to the preſent time, concur in proving and eſtabliſhing it to be law, that perſons holding the office of ſheriff, are ineligible to ſerve in Parliament.

As to the writ, there certainly cannot be ſuch ſtrong and weighty evidence of what the law is, and *this* in the moſt explicit terms, excludes *all* ſheriffs. The caſe of Payton (1) ſhows, that they were underſtood to be ineligible, in the reign of Edward I, The petition of the Commons, in the 13 Edw. III. proves, that their ſitting in Parliament, was then conſidered as an abuſe (C) (2). In thoſe days, the ſheriff was the ſervant and inſtrument of the Crown in oppreſſing the ſubject. It was on that account that the Commons were ſo diſpleaſed that any who held that office, ſhould be elected to ſerve in Parliament; and from the petition juſt mentioned it has been well obſerved (3) that a preſumption ariſes, that what has been called an *ordinance* in the 46 of Edw. III. had the concurrence of all the branches of the legiſlature, and was therefore a *ſtatute*. It is indeed denominated an ordinance, but it appears, that it was *accorded and aſſented to in full Parliament* (4); and many old laws, which are unqueſtionably complete ſtatutes, are called ordinances (5). Perhaps, an ordinance, in full Parliament, differed from what was peculiarly termed a *ſtatute*, in this reſpect, that the former was a name for a declaratory, the other, for an enacting law.

It would be tedious to mention the variety of ancient acts of Parliament, where the word "*ordains*" is the only term employed in the enacting part, and this before, during, and after, the reign of Edward III. The ſtat. of 4 Hen. IV. cap. 5, (which will be afterwards cited) begins thus: "Item, it is *ordained* and aſſented." The counſel on the other ſide will not deny, that 7 Hen. IV. cap. 15, is

(1) *Supra*, vol. i. p. 205.
(2) *Supra*, vol. i. p. 204.
(3) *Ibid.* Note (B). p. 216.
(4) Appendix to Ruffhead's Edition of the Statutes, p. xliii.
(5) *Vide* Preface to Ruffhead's Edition of the Statutes, p. xii, xiii. for the ſuppoſed difference between ſtatutes and ordinances.

15, is an act of Parliament, becauſe it is conſidered by Lord Coke as having repealed that of 46 Edw. III. Yet, the ſtatute of 6 Hen. 6. cap. 4. recites, that, by that act of 7 Hen. 4. "it was *ordained* and eſtabliſhed," &c.—23 Hen. VI. cap. 9. is, in the body of the act, called, "This *ordinance*."—Nay, in one of the petitions of 46 Edw. III. which Sir Edward Coke, in the preface to his 3d Report, cites as an act of Parliament, the prayer is, "Pleiſe *ordeiner* per *eſtatute*." What ſtronger evidence can be neceſſary to ſhow, that, at that time, "*ordinance*" and "*ſtatute*" were convertible terms? Even ſo late as 23 Hen. VIII. cap. 5. the enacting words are, "*ordained*, "eſtabliſhed, and enacted;" and in 18 Eliz. cap. 10. "Be it explained, *ordained*, and enacted."——

Sir Edward Coke gives it as his opinion, that, if the act of 46 Edw. III. *had* been a ſtatute paſſed with the authority of Parliament, "the ſame had been abrogated by 5 Ric. "II. ſtat. 2. cap. 4. (D), and 7 Hen. IV. cap. 15.;" which, he ſays, are general laws, without any exception (1). But the truth is, thoſe two ſtatutes could not operate a repeal of diſqualifications, created by previous acts of Parliament, or exiſting at common law. *That* could only be done by expreſs words, and there are none which can have that effect in either of them. Indeed, when it is conſidered, that Sir Edward Coke made his obſervations on the 46 Edw. III. with a view to his own caſe, little reliance will be had on his opinion, as it is well known, that in political queſtions, eſpecially where he himſelf was concerned, that great lawyer was but too apt to employ the eminent knowledge he poſſeſſed in the laws of his country, to pervert them to his own purpoſes, and thoſe of his party.

About the 46th year of Edw. III. agreeably to the law then eſtabliſhed, the clauſe of "*Nolumus*" was introduced into the writ, and, except with ſome interruptions during that reign and the next, and at the beginning of the reign of Henry IV, it has been continued invariably ever ſince. It was probably in compliance with the repeated and earneſt remonſtrances of the Commons, that this ſtep was taken; becauſe, it was reaſonable to ſuppoſe, that a conſtant check was thereby ſecured, which would prevent any future attempts to infringe this part of the law.

The

(1) 4 Inſt. p. 48.

The reluctance with which that arbitrary prince (Edw. III.) yielded to the desires of the people, on this head, appears from his attempt to suppress, so soon after it was framed, this prohibitory clause; an attempt, which, both he himself and his grandsons, Richard II. and Henry IV. (at least, till the fourth year of his reign) carried into execution.

But, although the reason why the Commons, at that æra, were so zealous to exclude sheriffs from Parliament, was, probably, the influence which the Crown had over them; yet, the legal ground of their ineligibility was, that, from the nature of their office, and the duties annexed to it, many of which can only be performed by their personal attendance in their county, they were bound to constant residence there. This is particularly specified in the act of 46 Edw. III.; and, in the 4th year of Hen. IV. a particular statute was made, by which it is "*ordained* and "assented, that every sheriff of England *shall abide* (1), *in* "*proper person*, in his bailiwick, for the time that he shall "be such officer (2);—and that the said sheriff be sworn, "from time to time, to do the same in special, amongst "other articles comprised in the oath of the sheriff (3)." In consequence of this statute, the following clause makes part of the oath of office, taken by every sheriff, "Ye shall "be dwelling, in your own proper person, within your "bailiwick, for the time ye shall be in the same office "(except ye be otherwise licenced by the king) (4) (E)". Being thus bound by oath to constant residence, a sheriff could not possibly, without perjury, leave his county to attend in Parliament; and, as the duration of a shrievalty, in early times, generally surpassed that of a Parliament, the oath, in itself, amounted to an absolute incapacitation.

From what has been said hitherto, it is very clear that, formerly, the offices of sheriff and member of Parliament were incompatible, and that, by law, a sheriff was ineligible. But, if such was the law, nothing but a positive statute can since have altered it; and whatever *modern* reasons

(1) The original words, so translated, are, "Soit *demurrant* en propre persone."
(2) 4 Hen. IV. *cap.* 5.
(3) *Ibid.*
(4) Dalt. Office of Sheriff, p. 10.

ſons of expediency may now be diſcovered againſt the ineligibility of ſheriffs, however, it may be alledged, that the act of 4 Hen. IV, and the clauſe thereby introduced into the ſheriff's oath, are now ſeldom enforced or complied with (E), ſtill it muſt be admitted, that thoſe reaſons, though they may influence the legiſlature to *change*, cannot, and ought not, to induce a court of juſtice to *over-rule*, the actual ſubſiſting law of the land.

So little doubt was, for a long courſe of years, entertained on this ſubject, that no inſtances can be found of any ſheriff's ſitting in Parliament from the time of Edw. III. down to the reigns of Hen. VIII. and Queen Elizabeth; and it appears that thoſe which happened in their reigns were caſes of perſons who were made ſheriffs after they had been choſen to Parliament (1). Now, to be ſure, neither the words of the act of 46 Edw. III. nor thoſe of the "*Nolumus*" extend to them, though the intention muſt have been to exclude all ſheriffs.

As to the diſtinction ſuggeſted by Sir Simon D'Ewes, and which has ſerved very much to embarraſs this matter, *viz.* that the prohibition only affects ſheriffs choſen within their own bailiwics, there is not the ſmalleſt foundation for it, either in the ſtatute and writ, or in reaſon and precedent. On the contrary, every precedent where the point has been brought to a deciſion, is, without one exception, from the caſe of Sir A. Nowel, down to that of Abingdon, againſt the eligibility of ſheriffs in general. The hiſtory of the caſe of Sir Edward Coke is well known. He, together with Sir Thomas Wentworth, Sir Francis Seymour, Sir Robert Philips, Sir Guy Palmes, Mr. Edward Alford, and Sir William Fleetwood, being able and diſtinguiſhed oppoſers of the arbitrary attempts of the Crown, were appointed ſheriffs, with the expreſs intention of diſqualifying them from being choſen to Parliament (2). The motive here was highly tyrannical, yet, ſo ſtrong was the perſuaſion, in thoſe days, of the general ineligibility of ſheriffs, that of the ſeven, only Sir Edward Coke (who, according to the expreſſion uſed at the time, was made the ſcape-goat) attempted

(1) Littleton's Rep. p. 329. But Sir W. Covert was firſt appointed ſheriff, and then elected to Parliament.

(2) Strafford's Letters, vol. ii. p. 29.

tempted to come into Parliament. And what was the conſequence of his election? It was complained of, and, though there was not time for a deciſion, he was treated by the Houſe as merely a member *de facto*, and abſtained from atttending (1).

The point had been ſolemnly determined a few years before, in the caſe of Sir George Selby (2), as thoſe of Longe, Hatcher, and that of Abingdon, have confirmed the doctrine which now cannot be overturned by any thing but an act of Parliament.

COUNSEL for the ſitting member.

It is not, neither can it be, denied that a writ, merely as ſuch, has no compulſive force, and that it muſt owe its validity to poſitive law. The prohibitory clauſe, therefore, in the writ of election, if it has the force aſcribed to it, muſt derive it either from the common law, or from an act of Parliament. The counſel for the petitioners have taken both theſe grounds, and, in the firſt place, they contend, that it is founded on what they call a ſtatute of 46 Edw. III. That this, however, is not a ſtatute muſt be inferred, both from the authority of the greateſt lawyers who have treated on the ſubject, and from an examination of the act itſelf. Sir Edward Coke lays it down, in two different paſſages of his Fourth Inſtitute, that it is not a ſtatute (3). Lord Keeper Littleton is of the ſame opinion, in his report of Longe's caſe in the Star-chamber, 5 Car. I. and he particularly proves the difference between ordinances and ſtatutes from ſeveral inſtances, where, by ſubſequent laws, what were at firſt only ordinances, were afterwards made ſtatutes. 1 Ric. II. cap. 5. 2 Ric. II. cap. 7. 34 Edw. I.—28 Edw. III. 11, 16, and 3 Ric. II. (4) Sir Bulſtrode

(1) Littleton's Rep. p. 340.
(2) *Supra*, vol. ii. p. 219.
(3) 4 Inſt. p. 10. p. 48.
(4) *Vide* Littlet. Rep. 328, 329. I cannot find the paſſages he refers to in 34 Edw. I. and 28 Edw. III. 11. and 16, and 3 Ric. II., in the ſtatute-book. Inſtead of 28 Edw. III. 11 and 66, we probably ſhould read 28 Edw. III. cap. 13, as that ſtatute is in point to the preſent purpoſe. *Vide* Whitel. Comm. vol. ii. p. 368.

ſtrode Whitelock tells us, that, in Sir Edward Coke's caſe, it ſeemed to be agreed that the ordinance of 46 Edw. III. was not made on the petition of the Commons, but was an act of the King and Lords only, and that it therefore hath not the force of law, and he adds, "that it was left as a clear truth, that neither this, nor any other ordinance, is the ſame thing with an act of Parliament, or has the ſame force of law in it (1)."

This diſtinguiſhed parliamentary lawyer alſo mentions inſtances where ordinances have, by ſucceeding laws, been made ſtatutes. It is ſaid, Sir Edward Coke's opinion on this ſubject, is to be miſtruſted, becauſe he was, in ſome meaſure, ſpeaking of his own cauſe; but this objection will not lie to the ſentiments of the other two, who had no particular intereſt in the queſtion (F).

If we now proceed to examine the ordinance itſelf, we ſhall find it deſtitute of the eſſentials of an act of Parliament. It is not entered on the ſtatute-roll (2), and, in the Parliament-roll, it is manifeſtly diſtinguiſhed from the petitions and anſwers, which was the form of acts of Parliament at that time; nor is there any appearance of its having had the concurrence of the three eſtates; and that is, and always was, neceſſary to every ſtatute (3).

If this had been an act of Parliament, the prohibition againſt lawyers contained in it would be equally valid with that againſt ſheriffs; but ſince the *Parliamentum indoctum* of Hen. IV. to this day, it never has been contended, that lawyers are incapable of ſitting in the Houſe of Commons. The order in the reign of Jac. I. that the Attorney General ſhould never ſit in the Houſe, as well as the proceedings on that occaſion, ſhow that it was the ſenſe of the Houſe itſelf that lawyers in general might be legally choſen; otherwiſe ſuch a ſpecial order againſt the Attorney General, would have been unneceſſary (4).

If after all, it ſhould, for argument's ſake, be admitted, that the ordinance in queſtion was a ſtatute, we have ſtill the concurring opinions of Sir Edward Coke and Littleton, that

(1) Whitelock, vol. ii. p. 359, 368.
(2) Ruffh. Append. p. 43. Note (a).
(3) Prince's Caſe, 8 Rep. p. 20. (G).
(4) *Supra*, vol. i. Note (I), p. 218.

that it was repealed by the two ſtatutes of 5 Rich. II. and 7 Hen. IV. (1). Nay, if it were even to be granted for a moment, that it is not only a ſtatute, but a ſtatute ſtill in force, it yet would not affect the preſent caſe; for the prohibition it contains is only againſt the election of ſheriffs to be *knights of the ſhire*. Although Southampton is certainly a county in itſelf, it will not be contended, that its members are knights of the ſhire. They are not choſen by 40 ſhillings freeholders, as all knights of the ſhire are, and have been, ever ſince the reign of Hen. VI.—— They are expreſsly called, "*Burgeſſes*," both in the writ to the ſheriff, and in the precept which he iſſues to the returning officer, for their election; and, in this reſpect, namely, of being choſen by *precept*, they reſemble the repreſentatives of common boroughs more than the members for other counties corporate do.

If we now take into conſideration the arguments brought to prove, that ſheriffs were ineligible at common law, it will be found to be a taſk of no great difficulty to refute them. The caſe of Warwickſhire, in the reign of Edward I. is relied on. But the writs on that occaſion, and all the proceedings attending them, were, according to our preſent ideas of the conſtitution, ſo anomalous and illegal, that no legal inferences can be drawn from them. The Parliament ſummoned by thoſe writs was to be choſen not by the people, but the King. The return made by Payton, was the act of the ſheriff himſelf, who was deſirous of being excuſed from ſerving in what was, in thoſe days, an expenſive and burthenſome office.——After all, that caſe can only be a precedent againſt the election of ſheriffs for counties.

If the ineligibility of ſheriffs had exiſted at common law, why is there is no inſtance of the "*Nolumus*" before the ordinance of Edw. III.? There is ſomething ambiguous in an expreſſion of Whitelock, which might, on a curſory reading, ſeem to imply, that ſuch a clauſe was inſerted in the writs immediately after the petition of 13 Edw. III. (C); (and even that would not ſhow the diſqualification to have been part of the common law;) but, in truth, he does not

(1) Co. 4. Inſt. p. 10. 48. Littlet. Rep. p. 329.

mean any ſuch thing; and Littleton expreſsly tells us, that the firſt inſtance of a writ containing the "*Nolumus*," was in 47 Edw. III.

The hiſtory of the clauſe of "*Nolumus*" is given us, both by Littleton and Whitelock. In the 47 Edw. III. as has been juſt mentioned, it was firſt introduced, and then it was omitted in the writs to the Cinque Ports. 49 Edw. III. it is in all the writs, except that for Briſtol (H). 50 Edw. III. in all. 1 Rich. II. omitted again in the writ for Briſtol. After 1 Rich. II. it was inſerted in that writ as well as in all the others, and ſo continued from the 1ſt to the 12th year of his reign. Before 12 Rich. II. it contained ſome words not now employed, which were in that year laid aſide, the form then being exactly the ſame as at this day. So it continued till 5 Hen. IV. when it was made to exclude lawyers as well as ſheriffs, the Parliament then choſen having been on that account ſtigmatized by the lawyers with the nick-name of "*Parliamentum indoctum*," or, "The lack-learning Parliament." In 7 Hen. IV. in conſequence of a petition of the Commons, it was enacted, "That elections ſhould be proceeded to *freely and indiffe-* "*rently*, notwithſtanding any *requeſt or commandment* to the "contrary (1)." Accordingly, the "*Nolumus*" was omitted in the writs the very next year, which ſhews clearly, that it was that prohibition which was particularly meant by the words "*requeſt*" and "*commandment*." It was not reſumed till 14 Hen. IV. From that time, till the preſent, it has been always inſerted, though with ſome exceptions as to the Cinque Ports and Calais, which had a writ to return members in the reign of Hen. VIII. (2). As then it is evident, that the "*Nolumus*" was laid aſide in 8 Hen. IV. in conſequence of the ſtatute of the preceding year, we muſt infer, that it became from thenceforward, at leaſt, illegal; and this being ſo, it neceſſarily follows, that it never could be legally reſumed; or, being *de facto* reſumed, could be of no force without a ſubſequent ſtatute for that purpoſe. Here Lord Coke's doctrine applies with great weight: "If," ſays he, "original writs, at the common law, can receive "no

(1) 7 Hen. IV. cap. 15.

(2) *Vide* Whitel. vol ii. p. 357. 359; and Littl. Rep. 328, with the rolls of Parliament there cited.

" no alteration or addition, but by act of Parliament, *a* " *multo fortiori*, the writs for the ſummons of the higheſt " court of Parliament, can receive no alteration or additi- " on, but by act of Parliament (1)" No ſtatute can be produced to authorize the revival of the " *Nolumus*" in 14 Hen. IV. and the continuance of it ever ſince. It is therefore illegal, and of no force.———The manner in which it came, in fact, to be renewed was moſt probably, as Littleton has conjectured, that the clerk who was to make out the writs, having an old precedent before him containing the prohibitory clauſe, copied the whole, *verbatim* (2). His error has been tranſmitted to our time, in conſequence of the eſtabliſhed routine of office.

The counſel for the petitioners, after endeavouring to prove that the ineligibility of ſheriffs is part both of the ancient common and ſtatute law, have recourſe, in order to confirm their doctrine, to topics of convenience and expediency drawn from early times. The danger of partiality and influence, which was ſo much inſiſted on in the caſe of Abingdon, does not apply here; becauſe the ſitting member did not return himſelf, but was elected for a county entirely independent of his bailiwick. It is ſaid that it is the duty of a ſheriff to reſide in his county during the whole time of his ſhrievalty, and that, conſequently, the offices of a ſheriff and member of Parliament are incompatible;—that a ſheriff is, by his oath, founded on a ſtatute of Hen. IV. obliged to conſtant reſidence. To this it may be anſwered, that the oath is never taken (E), and that, if the two offices were by law incompatible, a perſon who, being in Parliament, ſhould be made ſheriff, muſt vacate his ſeat; but it is admitted, and can be proved by a thouſand inſtances (3), that perſons already members, having been appointed ſheriffs, have continued to ſit, and have had leave given them by the Houſe to go into the country to attend their duty. The argument, that a ſheriff cannot do the duties of his office, and alſo attend in the Houſe of Commons, is of very little weight as things are now eſtabliſhed, ſince he is only ſheriff for one ſeventh part of the duration

(1) 4 Inſt. p. 10.
(2) Littl. Rep. p. 329.
(3) *Vide infra.*

of a Parliament. Indeed, the ſame argument bears much more ſtrongly againſt the eligibility of officers in the army during a war, and of miniſters in foreign countries: Yet it will not be maintained, that either officers or ambaſſadors are ineligible. Surely, if any arguments *ab inconvenienti* are to weigh in this queſtion, the danger to the conſtitution, if the King were to have it in his power to exclude fifty-two of the principal friends to the intereſts of the people from the Houſe of Commons, by appointing them ſheriffs on the eve of a general election, is of much more ſerious conſideration, than any diſadvantage that can be ſuggeſted as a conſequence of the eligibility of ſheriffs (I).

It now only remains to conſider the ſeries of caſes, and ſee how far they affect the general doctrine, or the particular queſtion now before the Committee.---The cleareſt method of doing this will be to arrange them in the order of time as they happened.

8 Hen. IV. Sir John de Bartly's eldeſt ſon was knight of the ſhire, and ſheriff at the ſame time; but had been appointed ſheriff *after* his election to Parliament (1).

34 and 35 Hen. VIII. Sir Edward North was, at one and the ſame time, knight of the ſhire and ſheriff for the county of Cambridge. This is proved by a very curious ſtatute of 34 and 35 Hen. VIII. cap. 24. (K) (2).

27 Eliz. 4 Dec. 1584. "Leave to Edward Leigh, Eſq; "knight for the county of Stafford, and, *ſince that time*, "choſen ſheriff for that county, to abſent himſelf in and "about his neceſſary charge and ſervice in the office of ſheriffwick (3)."

27 Eliz. 23 Feb. 1584-6. "Sir Edward Dymock, *being* "ſheriff of the county of Lincoln, was licenſed by the "Houſe to depart into the country for the ſervice of her "Majeſty in the charge of his ſaid office (4) (L)."

31 Eliz. 1588-9. "——— Saintpole, Eſq; one of the "knights in Parliament for the county of Lincoln, being "alſo ſheriff for the ſaid county of Lincoln at this preſent "time,

(1) Littlet. Rep. p. 329. from 8 Hen. IV. *Rot. clauſ.* M. 6. and M. 22.

(2) Litt. *loc. cit.*

(3) D'Ewes, p. 335. col. 2.

(4) *Idem*, p. 355. col. 1.

" time, had licence by the Houſe to depart into the country " about the attendance of his ſaid office of ſheriffwick (1) " (M)."

35 Eliz. 1592. Sir Walter Covert, being firſt ſheriff of Suſſex, was returned burgeſs for Petersfield in Hampſhire (2).——This is exactly in point to the preſent caſe (N).

In the ſame year Sir George Nin was ſheriff and knight of the ſhire (3) (N).

39 Eliz. 1597. Bernard Greenvil, high ſheriff of Cornwall, was member for Bodmin in that county (4).

43 Eliz. 1601. Sir Andrew Nowell, being ſheriff of Rutlandſhire, was choſen and *returned himſelf*, one of the members for that county. This being moved in the Houſe, it was unanimouſly reſolved, (4 Nov. 1601.) that the return was void, and that a new warrant ſhould be ſent forth (5).——Both D'Ewes and Littleton, obſerving on this caſe, conſider the principle of the determination to have been the abſurdity of a man's returning himſelf, and, on that ground, D'Ewes reconciles it with the caſe of Saintpole. The motion and reſolution, as appears from D'Ewes, were only concerning the *return*; and Littleton emphatically obſerves that nothing was ſaid of the *election* (6). D'Ewes indeed conjectures, alſo, that Saintpole was choſen to Parliament before he was made ſheriff, but he only gives this as matter of conjecture (M).

43 Eliz. 2 Dec. 1601. " Peter Frecheville, Eſq; return- " ed into this preſent Parliament for one of the knights for " the county of Derby, for that he *is* choſen ſheriff of the " county, and other his neceſſary affairs, is licenſed by Mr. " Speaker to depart home (7)."

12 Jac. I. 1614. Sir George Selby, *hereditary* ſheriff of the county of Durham, was returned knight of the ſhire for Northumberland. Upon a petition againſt him, the Houſe determined that he was ineligible, and a new writ was ordered.

(1) D'Ewes, p. 436. col. 2.
(2) Littl. Rep. p. 329. (3) *Ibid.*
(4) Br. Will. Not. Parl. vol. ii. p. 64.
(5) D'Ewes, p. 624, 625.
(6) Litt. *loc. cit.*
(7) D'Ewes, p. 665. col. 1.

dered (1).—This is the caſe of a ſheriff of one *county*, being holden ineligible for another county. It happened in bad times, is the only deciſion of the ſort, and was contradicted by that of Sir Edward Coke, which happened a few years afterwards.

1 Car. I. 1625-6. Sir Edward Coke, having been appointed ſheriff for the purpoſes mentioned by the counſel on the other ſide, was, notwithſtanding, choſen and returned one of the knights of the ſhire for Norfolk; and although, at the deſire of the King that he ſhould be removed, the matter was referred to the Committee of privileges; yet, when they made their report, they delivered no opinion againſt his eligibility (2) (O); and there is an order of the Houſe that he ſhould have privilege of Parliament in a ſuit in Chancery on the 9th of June following (3), only five days before the diſſolution of the Parliament; which ſhews that he was conſidered, to the laſt, as a member. As to the words "*de* "*facto*" in the entry, they probably were merely employed with a view not to irritate the King. In ſhort, this caſe of Sir Edward Coke is equal to a determination, and is conſidered as ſuch, not only in the Fourth Inſtitute, but by Whitelock, Littleton, and Mr. Juſtice Blackſtone (4).

3 Car. I. 1628. Walter Longe was ſheriff of Wiltſhire when he was returned, and ſat, for the city of Bath in Somerſetſhire (5); but, an information being filed againſt him in the Star-chamber, for attending in Parliament and not reſiding in his county, contrary to his oath, and the ſtatute of 4 Hen. IV. (6), he was, by a ſentence of that court, fined 2000 marks, and ordered to be impriſoned in the Tower, during the King's pleaſure, and until he ſhould make his humble acknowledgment and ſubmiſſion in the court of Star-chamber, and to the King (7). This caſe is

(1) Journ. vol. i. p. 457. col. 2. p. 458. col. 1. Whitel. vol. ii. p. 369.

(2) Journ. vol. i. p. 825. col. 1. 27 Feb. 1625-6.

(3) *Ibid.* p. 869. col. 2.

(4) Blackſt. Comm. vol. i. p. 175. 4to Ed.

(5) Littl. Rep. p. 326. Br. Will. vol. i. p. 223.

(6) *Supra*, p. 45.

(7) *Vide* Parl. Hiſt. vol. viii. p. 381. where the information and judgment are ſet forth at large.

is cited as an authority on the other ſide. But on a moment's conſideration, it will be ſeen to be nothing leſs. It appears, from a great variety of authorities; that Longe ſat during all the ſhort Parliament of 3 Car. I. without any objection being made in the Houſe of Commons;——the only judicature entitled to judge of the legality of his election; and the Houſe afterwards ſhowed that they conſidered the proceedings againſt him, in the Star-chamber, as oppreſſive, and againſt law, by the following reſolution.

18 Jan. 1646-7. Reſolved, "That Mr. Walter Longe "ſhall have the ſum of 5000*l.* paid unto him, for the "damages, ſufferings, loſſes, and impriſonments, ſuſ-"tained and undergone by him, for his ſervice done to "the Commonwealth, in the Parliament of *Tertio Ca-"roli* (1)."

We may, therefore, with greater juſtice infer, when all the circumſtances relative to Longe are taken together, that his caſe ſtrongly favours the eligibility of ſheriffs for boroughs out of their counties; although it muſt be owned that it does not furniſh a *direct* parliamentary deciſion one way or the other.

In the debate on Hatcher's caſe, it was mentioned by Mr. Powle, that Serjeant Croke's brother had ſerved in the long Parliament for a borough in Oxfordſhire, when ſheriff of that county; and in this he was not contradicted by the Serjeant, who was preſent, and ſpoke in the debate, againſt Mr. Hatcher (2) (P).

1660. Mr. Oakley, having been made ſheriff of Shropſhire, during the Parliament of the Interregnum, was choſen for Biſhop's-Caſtle, in his own county, and ſat without diſpute (3).

1677. Mr. Hatcher, ſheriff of Lincolnſhire, on a vacancy for the borough of Stamford, in that county, offered himſelf a candidate, and had a majority of votes; but probably from an idea that a ſheriff could not return himſelf, he made a return of H. Nowell, Eſq; the other candidate, and

(1) Journ. vol. v. p. 55. col. 2.
(2) A. Grey's Debates, vol. iv. p, 316.
(3) Grey, *loc. cit.* p. 317. Br. Will. Not. Parl. vol. i. p. 292.

and then preſented a petition to the Committee of elections, deſiring to be received to his ſeat, in the room of Nowell. This occaſioned a debate in the Houſe, and, on the queſtion, the petition was rejected, becauſe he was thought to be concluded by his own return of another perſon (1). This is the great caſe, which was ſo much relied on, laſt year, in the Abingdon cauſe; but, though it might be in point on *that*, it certainly is not on the preſent occaſion, as will be ſhewn immediately.

1710. 5 Dec. Mr. Harpur, ſheriff of Derbyſhire, having been returned for the borough of Derby, a petition was preſented complaining of his election, on the ground of the incapacity of ſheriffs (2). The petition was afterwards withdrawn (3).

1727. Charles Bathurſt, Eſq; and Sir M. Wyvill, being returned members for Richmond in Yorkſhire, a petition was preſented againſt them, by the two unſucceſsful candidates; in which it was mentioned, that Bathurſt was ſheriff. Yet, though the two petitioners were declared duly elected, the determination went entirely on a point concerning the right of election, and there was no queſtion made as to the eligibility of a ſheriff (4).

1766. On a vacancy for the city of Wells, in the county of Somerſet, occaſioned by the Lord Digby's being called up to the Houſe of Peers (5), Mr. Child and Mr. Peter Taylor, ſenior, were candidates. There were two returns; one by the ſenior maſter of the borough, to whom the ſheriff (who was Mr. Taylor's ſon) had delivered the precept. By this, Taylor was returned. The mayor, who was the legal returning officer, made a return in favour of Mr. Child, and tendered it to the ſheriff, who refuſed to receive it. On this, the mayor petitioned the Houſe (6), and *his* return was ordered to be filed in place of the other, with leave, however, to Mr. Taylor, and the electors, to complain

(1) Journ. vol. ix. p. 407. col. 1.
(2) *Ibid.* vol. xvi. p. 419. col. 1.
(3) *Ibid.* 19 Feb. 1710-11. p. 507. col. 1.
(4) *Ibid.* vol. xxi. p. 25, 26. 72. col. 2. 78. col. 1, 2. 86. col. 1.
(5) *Ibid.* vol. xxx. p. 439. 17 Dec. 1765.
(6) *Ibid.* vol. p. 456. 15 Jan. 1766.

complain of the election, within a fortnight (1). Accordingly, two petitions were preſented, complaining of the election of Mr. Child, and in both it was *ſpecially* alleged, that Mr. Child had been declared duly elected, contrary to the tenor of the writ, "*being then the acknowledged ſheriff* "*of Warwickſhire (2).*" The general point was, on that occaſion, very fully argued, by the counſel for Mr. Taylor; but they found the opinion of the Houſe ſo very clear againſt them, that it was thought adviſeable to withdraw the petitions, before there was any expreſs deciſion (3) (Q).

1775. The laſt caſe happened laſt year, *viz.* The Caſe of Abingdon, when Mr. Mayor, ſheriff of Berkſhire, being choſen and returned for Abingdon, a borough within his own county, the Committee determined, that his election was void (4).

The caſes which have been juſt mentioned may all be reduced under five different heads, or claſſes of ſheriffs; *viz.* 1. Perſons made ſheriffs *after* they were returned to Parliament. 2. Sheriffs choſen knights for their *own* ſhires. 3. Sheriffs choſen for boroughs *within* their juriſdiction. 4. Sheriffs of *one* county choſen for *another*. 5. Sheriffs choſen for boroughs *without* their juriſdiction.

Now, as to the firſt claſs, as it is admitted, and, indeed, irreſiſtibly proved, that *they* are capable of continuing to ſit in Parliament, it follows, that the two offices are compatible; and therefore all reaſoning to the contrary is of no avail. Sir A. Nowell's caſe is a deciſion againſt the eligibility of ſheriffs to repreſent their *own* counties, (which is the 2d claſs) and there is no poſitive deciſion the other way. The caſes of Mr. Hatcher, and of Abingdon, are perhaps direct determinations againſt the eligibility of perſons in the 3d claſs; and, although there are, among the foregoing inſtances, ſeveral, of perſons who were in this predicament, and continued to ſit, even after being petitioned againſt, yet, ſeeing there is no poſitive determination in their favour, we may

(1) Journ. vol. xxx. p. 466. 20 Jan. 1766. *Vide ſupra*, vol. i. Caſe of Morpeth, p. 77.
(2) *Ibid.* p. 506. 31 Jan. 1766.
(3) *Ibid.* p. 601. 24 Feb. 1766.
(4) *Supra*, vol. i. p. 214.

may allow it to be law, that ſheriffs cannot be choſen for boroughs within their juriſdiction. But the ineligibility of the two laſt-mentioned claſſes, (*viz.* 2d and 3d) may, and ſeems to, reſt on grounds of general law, independent of the "*Nolumus*" in the writ, and the ordinance of 46 Edw. III. *viz.* the incongruity of a perſon's returning himſelf, and the inexpediency of a ſheriff's being capable of repreſenting his own county. The 4th claſs *are* eligible, according to Sir Edward Coke's caſe. If the caſe of Sir George Selby is to be the rule, they are *not*; and that caſe, to be ſure, is conſonant to the ordinance. But the preſent ſitting member falls under the 5th claſs, and there is not to be found, either among the precedents which have been ſtated, or in any author, an inſtance where a ſheriff, choſen for a borough *out* of his juriſdiction, has been determined, or held, to be unduly elected, or incapable of retaining his ſeat. The ordinance of 46 Edw. III. if we were to allow it all the weight of an act of Parliament, does not affect this claſs; and, although there is no poſitive deciſion in their favour, yet the caſes where they have been allowed to ſit, when complained of, have, if oppoſed to nothing, the authority of deciſion.—The caſe of Wells, particularly, may be reckoned an adjudged caſe, ſince (as was hinted before) it is well known, that the objection to Mr. Child was very ſtrongly argued at the bar, and was only given up, becauſe the ſenſe of the Houſe was manifeſtly againſt it.

As, therefore, it is the opinion of the beſt parliamentary lawyers, and of ſuch as could have no intereſt in the queſtion, particularly a late learned and elegant author (1), that ſheriffs *are* eligible without their juriſdictions;——As the 46 Edw. III. the only poſſible legal foundation for the "*Nolumus*," (which, where it exceeds the prohibition in that ordinance, can have no claim to any authority) extends only to members for counties;——As there is no caſe where a ſheriff, choſen a burgeſs out of his own county, has, on that account, been removed from the Houſe;——As there are, on the contrary, many inſtances where ſheriffs ſo elected have ſat, even though objected to;——And, as all diſabilities are to be conſtrued ſtrictly;——The Committee, for all thoſe reaſons, and their force is much increaſed by the danger

(1) Blackſt. Comm. vol. i. p. 175. 4to. Ed.

danger of augmenting the influence of the Crown, will not think that they can, or ought to deprive the preſent ſitting member of his ſeat as a burgeſs for Southampton, becauſe, at the time of his election, he was ſheriff of the diſtinct and independent county of Hampſhire.

COUNSEL for the petitioners, in reply.

The general point contended for on the part of the petitioners is, "That a ſheriff is not eligible for any county or "borough;" and, notwithſtanding what has been urged on the other ſide, this doctrine, on a fair review of the arguments ariſing from the writ, from the ſtatutes, from the authority of writers on the ſubject, and from the caſes, muſt ſtand its ground, and ought to be confirmed by the determination in this cauſe.

The writ does not *make* the law.——Agreed. But a clauſe, which has exiſted in the writ almoſt ever ſince the Parliament itſelf has exiſted in its preſent form, is certainly the moſt ſatisfactory evidence *of* the law. The petition in 13 Edw. III. proves that the "*Nolumus*" does not depend on the act of the 46th of that King; and that it derived its origin from the people (C). Its authority is confirmed by 4 Hen. IV. cap. 5. which ſtatute remains in force to this day. It has been already obſerved that Parliaments, in thoſe days, were generally of much ſhorter duration than the annual office of ſheriff. Conſequently, at that period, there was the utmoſt propriety in excluding from Parliament perſons who without breach of their oaths (E), could never once take their ſeats.

If we were to admit that the "*Nolumus*" was firſt introduced by the act of 46 Edw. III. ſuch admiſſion would not derogate from its authority, ſince *that* is moſt undoubtedly a ſtatute. It has been ſhown that nothing is ſo common in the old acts of Parliament as to call ſtatutes "*ordinances*." The very word uſed in the writ itſelf for "enact" is "*ordinare*." Prynne clearly refutes Lord Coke's diſtinction, and mentions above an hundred printed ſtatutes which uſe the names of "acts" and "ordinances" indiſcriminately, or elſe couple the words "act" and "ordinance" together, as ſynonimous expreſſions. He particularly ſays that this of 46 Edw. III. "was an *act* and "ordinance

" ordinance of Parliament, which are both one in law and " obligation (1)"

The words of 46 Edw. III. ſhow that the reaſon for incapacitating ſheriffs was general, and applied equally to thoſe choſen for boroughs, as well as counties, or out of, as well as in, their juriſdiction; and the " *Nolumus*" explicitly prohibits the election of any ſheriff whatſoever. If the reaſon of the incapacity of a ſheriff to ſerve for his own county had only been, that a man muſt not return himſelf, why did not the prohibition run, " *Nolumus autem quod tu* " *aliqualiter ſis electus*" without the addition of " *nec aliquis alius vicecomes dicti regni noſtri.*"

But it is ſaid that, ſuppoſing 46 Edw. III. to be a ſtatute, it is repealed by the two ſubſequent acts of Ric. II. and Hen. IV. On a peruſal, however, of thoſe acts, it is manifeſt that they have not the ſmalleſt relation to the preſent ſubject. That of 5 Ric. II. was only made to compel the attendance in Parliament of " every one to whom it belongeth," and to prevent ſheriffs, in future, from leaving out of their returns cities, and boroughs, entitled, or bound, to ſend members; an abuſe which ſeems to have been very prevalent about that time (2). The ſtatute of Hen. IV. cap. 15. inſtead of annulling the prohibition againſt ſheriffs, rather affords a very ſtrong argument in ſupport of it, for it recites " that ſheriffs had made elections " contrary to the form of the writ." The object therefore was to re-eſtabliſh the authority of the writ. The paſſage relied on by the counſel for the ſitting member is this: " In full county they ſhall proceed to the election " freely and indifferently, *notwithſtanding any requeſt or* " *commandment to the contrary.*" But theſe words can only be applied to the interference and influence of the ſervants of the Crown, by means of letters and private ſolicitation. It is very obſervable, that the ſtatute in queſtion introduced a new clauſe into the writ; and that, in order to do ſo, the legiſlature thought it neceſſary to preſcribe the very words to be employed. When they were ſo extremely exact with regard to a new clauſe, can we ſuppoſe that they would not have been equally exact and explicit,

(1) Pryn. Animadv. p. 13.
(2) *Vide ſupra*, vol. i. p. 35. Note (D).

plicit, if they had meant to enact that a former clauſe ſhould be expunged?

When, therefore, it is conſidered, that Lord Coke, and Whitelock (as far as the latter gives any opinion of his own in favour of the eligibility of ſheriffs), mention theſe two ſtatutes as repealing that of Edw. III. the force of every thing elſe advanced by them on the ſubject muſt be much weakened in the mind of every impartial reaſoner. The former, beſides his being particularly biaſſed on this queſtion, has fallen into a great number of very palpable miſtakes, which have been clearly detected by Prynne, in his animadverſions on the Fourth Inſtitute (1). After all, even *he* does not directly maintain that ſheriffs are eligible. He only ſtates, that he himſelf was allowed privilege, and leaves the reader to draw the inference. Whitelock gives us the arguments on both ſides, made uſe of in Coke's caſe; and obſerves, at the concluſion, "That the prohibition has been long continued, and generally obſerved (2)."

The arguments of Littleton (F) are frivolous and fallacious. He does not ſeem to have known of the petition of 13 Edw. III. (C). His ſuppoſition that the "*Nolumus*" got again into the writ by the blunder of the clerk, is a ſtrange one indeed; for who can believe, that ſuch an important clauſe could have paſſed ſo long unnoticed, if its being in the writ reſted on no better foundation, or that this circumſtance would have eſcaped the vigilance and penetration of thoſe able patriots who ſat in the Committee of elections on Sir Edward Coke's caſe?

It is evident that Sir William Blackſtone has not conſidered this ſubject with his uſual accuracy. He mentions it in a very general curſory manner, and the authorities he cites, are Coke and Whitelock, who have been ſufficiently refuted.

Every *decided* caſe confirms the authority of the "*Nolumus*." It is unneceſſary to obſerve upon inſtances where there was no petition or complaint; for although, perhaps, a diſability to be choſen *may* be taken up in the Houſe (3) without

(1) P. 12. 13.
(2) Whitel. vol. ii. p. 359.
(3) *Supra*, vol. iii. Caſe of Petersfield, Note (A), p. 8.

without any petition, yet nothing can be inferred in favour of ſheriffs, becauſe the objection to their eligibility has, in ſome inſtances, been overlooked. Minors are by law ineligible, and incapable of ſitting in Parliament. Yet how many examples are there, in our own day, where perſons under age have been returned, and have ſat in the Houſe of Commons, without objection? The caſes cited, of ſheriffs to whom leave has been given to ſuſpend their attendance in Parliament, in order to execute their duty in their counties, prove nothing farther than that they are improper perſons to be elected; and there are many inſtances where it has been voted a breach of privilege to appoint a member of Parliament to the office of ſheriff (1). The queſtion, however, on the preſent occaſion, is not as to the capacity of members of Parliament, afterwards made ſheriffs, to retain their ſeats; ſo that all inſtances of that kind, as well as all thoſe where there was no complaint, or, if there was a complaint, no deciſion, ought to be laid entirely out of this caſe.

Sir Edward Coke's caſe is of the laſt mentioned ſort, for there was no deciſion upon it. Indeed, the hiſtory of that affair militates ſtrongly againſt the doctrine maintained on the part of the ſitting member.

He was made ſheriff, together with *ſix* others, (R) with the expreſs arbitrary deſign of excluding them from Parliament. Yet although the patriots who ſat in that Parliament, were full of zeal againſt the deſpotic meaſures of the court; although this meaſure muſt have excited their heavy indignation; although we muſt preſume that every argument which legal and conſtitutional learning could furniſh, or the acuteneſs of the ableſt men of the time ſupply, was employed; yet neither the Committee of elections, nor the Houſe, ever ventured to reſolve that a ſheriff was eligible, or might ſit in Parliament. Their inclinations and wiſhes, no doubt, urged them to ſuch a reſolution, but, as interpreters of the law, they found it impoſſible.

Longe's caſe was not tried in Parliament, but, when the Houſe came afterwards to indemnify him, for the impriſonment and ruinous fine impoſed on him by the Star-chamber, in conſequence of a moſt oppreſſive proſecution (S), they

(1) *Quære?*

(S), they did not determine, that he was, when ſheriff, eligible to Parliament, which, on that occaſion, they moſt aſſuredly would have done, if they had not felt that it was impoſſible to explain away, or controvert, the law on the ſubject.

The only caſes where the point was fairly brought to a deciſion, are thoſe of Sir George Selby and Mr. Hatcher, and that of Abingdon. The firſt proves that a ſheriff of one county cannot be choſen for another. We are told that this happened in the reign of a tyrant; but it is to be conſidered that the Houſe of Commons were hardly ever more zealous or ſucceſsful guardians of their own privileges than under that tyrant; and that, if ſuch an argument is admitted, in its full latitude, to invalidate the authority of decided caſes, the effect will be, to make a great part of the records of Parliament mere waſte paper. Longe's caſe ſeems to be tantamount to a determination that a ſheriff is not eligible for a *borough without* his county. Hatcher's and the Abingdon caſe ſhew that ſheriffs are as incapable of repreſenting boroughs as counties; and it is well known (1) that the Committee, in deciding the latter, did not go upon the ſuppoſed difference between a borough *within*, and one *out of*, the ſheriff's juriſdiction. In ſhort, the adjudged caſes prove the general doctrine, and confirm the "*Nolumus*" in its full extent.

Upon the whole, the Committee cannot determine the preſent cauſe in favour of the ſitting member, without, in effect, repealing a poſitive clauſe in the parliamentary writ; which, however introduced, whether before, or in conſequence of, the act of 46 Edw. III, is now part of the law of the land. Indeed, if it were not, it cannot be conceived that it would have been overlooked at the time of the petition of rights, and of the Revolution. But it has remained and gained daily ſtrength by a continued uſage, much longer than what has been ſufficient to eſtabliſh ſome of the moſt important parts of the law, whoſe original introduction is neither ſo ancient, nor ſo well founded, as that of the "*Nolumus*." Thus common recoveries, though contrived to evade a poſitive act of Parliament, and of much more modern date than the "*Nolumus*," are now

ſo

(1) *Quære?*

ſo clearly part of the law of England, that they cannot be queſtioned in any court of juſtice. In like manner, impriſonment for debt is now an undeniable part of the law, yet it is not founded on any ſtatute, but was brought into uſe by mere inference and implication. Prynne, indeed, has ſaid (1), that the parliamentary writ, not being what is technically called "*original*," is alterable, and cites inſtances of temporary alterations actually made in it, in former reigns. But thoſe inſtances, though they ſhew the thing to have been done "*de facto*," do not prove that it was legal or conſtitutional, no more than the examples of qualifications to ſerve in Parliament, altered in thoſe times, as the ſame author obſerves (2), by the King, at his pleaſure, prove the legality of ſuch alterations, or that they might be lawfully put in practice at this day. Surely if any writ ought to be ſacred, *this* ſhould, which concerns the moſt important birthright of the ſubject. On this Lord Coke, (whoſe opinion as a *lawyer*, was as ſuperior to Prynne's, as *his* diligence as an *antiquarian*, ſeems to have ſurpaſſed Lord Coke's) delivers his ſentiments very clearly. His words, indeed, in the paſſage now alluded to, have been quoted by the counſel on the other ſide, to invalidate the authority of the "*Nolumus* (3)," but it being now demonſtrated, that the prohibitory clauſe is a legal part of the writ, they certainly apply to ſhew that nothing but an act of Parliament can expunge or annul it: Yet, a deciſion of the Committee, declaring that Mr. Fleming was eligible at the laſt general election, would amount to nothing leſs.

The Committee, after deliberation among themſelves, directed the Chairman to inform the counſel, that they had come to the following reſolution:

Reſolved, "That it is the opinion of this Committee, "that John Fleming, Eſq; being ſheriff for Hampſhire "at the time of the laſt general election, was eligible "to ſerve in Parliament for the town of Southampton."

Being made acquainted with this reſolution, the counſel for the petitioners ſaid, They would prove that the ſheriff of the town, in making out his precept to the returning officer

(1) Animadv. p. 15.
(2) Ibid. p. 13.
(3) *Supra*, p. 50.

officer at the laſt election, had not followed the words of the writ, as is the eſtabliſhed practice, but had omitted the "*Nolumus*." That, though the Committee had now determined that the ſheriff of Hampſhire was eligible notwithſtanding the "*Nolumus*;" yet the ſheriff of Southampton had no right to anticipate ſuch a determination. That, if the "*Nolumus*" had been in the precept, it might, perhaps, have weighed with the electors, ſo as to induce many to vote for Lord Charles Montagu, who, in the event which happened, had voted for Mr. Fleming. They ſaid, they could ſhow that the omiſſion was the effect of improper partiality, and contrived with a view to ſerve Mr. Fleming. That the electors had demanded to ſee the writ, and were refuſed. That, on this ground, the election ought to be avoided. That, if it were not, this would be a precedent of a moſt dangerous tendency, becauſe it would furniſh future ſheriffs with a pretext to garble and mutilate the writ in other parts, in ſuch manner as might ſuit their particular ends.

The counſel for the ſitting member contended,

That thoſe on the other ſide had not a right to go into evidence of the facts they now alleged, becauſe there was no charge on that ground contained in the petition, and they were not, therefore, prepared to anſwer or make a proper defence to this new complaint. That the petition itſelf proved the electors to have known the contents of the writ, ſince it recites the "*Nolumus*;" ſo that it is impoſſible to ſuppoſe the election would have been otherwiſe, if it had been inſerted in the precept. That the only petitioners before the Committee were voters who had given their ſuffrages for Lord Charles Montagu, and that *they* could not complain of being miſled by the omiſſion of the "*Nolumus*." That, in the caſe of Petersfield, the Committee had refuſed to let the counſel for the petitioners go into an objection, although mentioned in the petition, becauſe it was not directly alleged as a ſpecific ground of complaint (1).

In reply, on the part of the petitioners, it was argued,

That the general allegation in the petition, of the undue return of the ſitting member, was ſufficient to entitle them

(1) *Supra*, Vol. iii. p. 4, 5.

to go into the proof of the facts ſuggeſted. That it ſurely cannot be neceſſary to ſet forth ſpecially in a petition every circumſtance which contributes to vitiate an election and return. That the Committee had the writ and precept both before them. That both were, *ex neceſſitate*, evidence in the cauſe, and therefore they muſt take notice of the irregularity in the precept, and there could be no reaſon why the petitioners ſhould not be ſuffered to give evidence of ſuch facts as might ſerve to explain the cauſes and motives of that irregularity. That, although, in the Petersfield caſe, the objection happened to prevail, it ſeemed ſo groundleſs to the counſel for the ſitting member, that one of them would not ſpeak in ſupport of it (1).

The court being cleared, the Committee after deliberation, came to the following reſolution, which they directed the Chairman to communicate to the counſel;

Reſolved, "That the evidence propoſed to be given "cannot be gone into, the matter not being alleged in the "petition."

In the beginning of the cauſe, after the leading counſel for the petitioners had opened their caſe, Mr. Bulkeley, one of the three returning officers, was called, and aſked, If it was known at the time of the election, that Mr. Fleming was ſheriff of Hampſhire.—The purpoſe of this evidence was to ſhow (if the Committee ſhould think the ſheriff ineligible) that the votes given for him were thrown away.

The queſtion was objected to.

It was admitted to be a general rule, that where there is a legal incapacity, and the fact of a candidate's being under ſuch incapacity is known, the votes given for him are thrown away. But it was contended, that there was no ſpecial allegation in the petition, that the fact of Mr. Fleming's being ſheriff was known, at the time of the election, to the electors, and that, therefore, no evidence could now be received to prove what was not directly alleged in the complaint That the rule, juſt and expedient in itſelf, was firmly eſtabliſhed by the deciſion in the caſe of Petersfield. That, in the petition in the Abingdon

(1) Mr. Hardinge. *Vide ſupra*, Caſe of Petersfield, Vol. iii. p. 5.

Abingdon caſe, the fact of the notoriety of Mr. Mayor's being ſheriff, was particularly ſet forth. That the allegation in the preſent petition was, that Mr. Fleming was ſheriff, and that *that* circumſtance being known to the electors was a diſtinct fact, and was not ſtated.

This point having been argued by the counſel, the Committee, after deliberation, informed the counſel, That they were of opinion *not* to hear the evidence offered, *then*.

After the great queſtion was decided againſt the petitioners, it became unneceſſary for their counſel to try to be let into this evidence.

On Monday, the 12th of February, the Committee, by their Chairman, informed the Houſe, that they had determined,

That the ſitting member was duly elected (1).

(1) Votes, p. 306.

NOTES

ON THE CASE OF

SOUTHAMPTON.

PAGE 40. (A) In this, and ſeveral of the foregoing caſes, when any queſtion of conſtruction has ariſen on the words of a petition, I have thought it proper to ſet forth the whole of the petition, or the entry of it in the votes, which (except that the formal beginning and concluſion are omitted, and the petition is there thrown into the ſhape of a recital), is exactly the ſame.

P. 42. (B) The mayor and two bailiffs are called, "The "returning officer" in the ſingular number, by a kind of legal figure, as the office is one, though executed jointly by three perſons. Thus, in like manner, the two ſheriffs of London are called, in the ſingular number, ſheriff of Middleſex.

P. 43, 49, 59, 61. (C) The following note upon that paſſage in Whitelock where he mentions this petition of 13 Edw. III. was furniſhed me by a gentleman at the bar, who has deſerved well of the public by being the editor of Glanville's reports, and whoſe accuracy, I believe, may be relied on. (*Vide infra*, Note (O).)

"Whitelock's aſſertion is erroneous. There is no ſuch pe-"tition upon the roll of Parliament of that year. I have pe-"ruſed the whole of that roll with attention; and the only ar-"ticle relative to elections, is No. 22. which only directs, "that it be inſerted in the writ of election, that two knights "*girt with ſwords* ſhall be returned for counties."

P. 44. (D) It is very obſervable, that this ſtatute of 5 Rich. II. and the other four paſſed at the ſame time, are, in the preamble, called "Ordinances and eſtabliſhments;" and in the title, "*Ordinationes & concordie.*"

P. 45, 46, 51, 59. (E) There was, in this caſe, much argument concerning the ſtatute of 4 Hen. IV. *cap.* 5. and the clauſe in the ſheriff's oath, by which this reſidence in his county

county was required; but the hiſtory of the oath was not explained. The ancient oath of office taken by ſheriffs is in the Regiſter, fol. 201, 202. to which, in the courſe of time, large additions were made, as appears by comparing the form in the Regiſter with *that* given in Dalton (fol. 9, 10). In the additional part is contained the clauſe enjoining reſidence, ſet forth in the text (*ſupra*, p. 46). This clauſe was, no doubt, introduced in conſequence of the ſtatute, although it may be obſerved, that, in the ſtatute, there is no authority for that part which allows a diſpenſing power to the King. The framers of the oath imagined *that* to be an inherent part of the royal prerogative. When Sir Edward Coke was made ſheriff of Buckinghamſhire in order to prevent his being choſen to Parliament, he objected to four of the additions to the oath (Cro. Car. p. 25, 26); whereupon, in conſequence of a conference of all the judges with the Lord Keeper, one of the additions, *viz.* that by which the ſheriff was to ſwear that he would do all in his power to deſtroy, and make to ceaſe, all manner of Lollardies, &c. within his bailiwick, was ſtruck out by an order of Council, (Parl. Hiſt. vol. vi. p. 422.) as having been inſerted in conſequence of the ſtatutes of 5 Ric. II. ſtat. 2. cap. 5. and 2 Hen. IV. cap. 15. which ſtatutes were repealed, on the eſtabliſhment of the Proteſtant religion, by 1 Edw. VI. cap. 12. and 1 Eliz. cap. 1. But it is obſervable that Coke took no exception to the clauſe concerning reſidence; and it is ſaid that, during the ſhort continuance of the ſecond Parliament of 1 Car. I. when his right to ſit in Parliament was agitated, he uſed to ſleep every night at his houſe in Buckinghamſhire, in order to comply with the oath and ſtatute. Whitelock tells us that the King uſually diſpenſed with the reſidence of ſheriffs in their counties (vol. ii. p. 180, 181); however, that had not been done in Longe's caſe. But, in the reign of George I. a new oath was framed for all ſheriffs, (excepting thoſe of Cheſter and Wales) and, by the ſtat. of 3 Geo. I. cap. 15. § 18, was ſubſtituted in lieu of the former; varying from it in ſome reſpects, and particularly, containing no obligation to reſidence. By § 20. of the ſame act, it is provided, that the ſheriffs of Wales and Cheſter ſhall continue to take the ancient oath; but it is alſo provided, that, with reſpect to them, the clauſe concerning reſidence ſhall be left out. This ſtatute does not expreſsly repeal that of Hen. IV. but it ſeems, by fair and reaſonable conſtruction, to have that effect; and, if ſo, any diſability ariſing from the neceſſity impoſed on ſheriffs by that ſtatute, of reſiding in their counties, is now removed. The ſtat. of Geo. I. and the alteration thereby made with regard to the oath, were not mentioned on either ſide, in this cauſe.——Littleton, in his argument in Longe's caſe, explains the

the French word "*demurrant*," in the act of Hen. IV. to mean "reſiant." He cites Jeffries' caſe (5 Rep. p. 67, a.) to prove, that a man may be *reſident* where he doth not *inhabit*, if he *occupies* lands there; and ſays it was reſolved in Coke's caſe, that it was neceſſary, by 1 Hen. V. cap. 1. that knights of the ſhire ſhould be *reſiant* in the counties for which they were choſen; and that he (Coke) was held to be *reſiant* in Norfolk, becauſe he had lands there, although he *inhabited* elſewhere. But, in the firſt place, there was certainly no point *reſolved* in Coke's caſe, if by "*reſolved*," is meant, "decided;" in the ſecond place, according to this explanation of the word "*reſiant*," a perſon might be entitled to be conſidered as being, at one and the ſame time, *reſiant* in every county in England, which would be abſurd; and, in the third place, "*demurrant*," in the ſtat. of Hen. IV. ſeems to be very properly tranſlated by "*abide*" in the ſtatute-book, and by "*dwelling*," in the ancient oath. This is agreeable to the ſenſe of the modern French word "*demeurer*;" and, if the anecdote is true relative to Sir Edward Coke's ſleeping during his ſhrievalty in Buckinghamſhire, it is clear that *he* underſtood the ſtatutes and oath to mean "*dwelling*." In Jeffries' caſe it is only ſaid, that a man who manures lands in a pariſh is thereby reſident upon them, and a pariſhioner, *to the purpoſe* of being taxed to repair the church, &c.

P. 48. (F) Littleton was ſo far intereſted, that he was counſel for Longe; ſo that it is his *argument*, not his *opinion*, which he gives in his report. He was not made a judge till 15 Car. I. *Vide* Cro. Car. p. 565. *Vide* alſo Parl. Hiſt. vol. viii. and the Life of Littleton prefixed to his Reports.

P. 48. Note 3. (G) The reaſoning in the Prince's caſe, in the 8th Report, ſeems to me to favour the opinion that 46 Edw. III. is a ſtatute. It is there ſhown, that a ſtatute may be in the form of a grant, or of a charter or letters patent from the King; that there uſed to be great variety in the penning of acts of Parliament; that there are many which are indited, "*Quod* DOMINUS REX *ſtatuit*;" and that, in ſuch caſes, if they be entered in the Parliament-roll, (which 46 Edw. III. was), and always allowed for acts of Parliament, it ſhall be intended, that it was by authority of Parliament, (8 Rep. 20, b.) The report goes on to ſay, "But if an act be penned, "that the King with the aſſent of the Lords, or with the "aſſent of the Commons, it is no act of Parliament; for three "ought to aſſent to it, *ſcil.* the King, the Lords, and the Com-"mons; or otherwiſe, it is not an act of Parliament: and by "the record of the act it is expreſſed which of them gave their "aſſent, and that excludes all other intendments that any "other gave their aſſent; and ſo there is a difference between

"a gene-

" a general and particular penning of an act of Parliament." *(loc. cit.) Magna Charta* itſelf is in the form of a charter; and it is ſingular that in the Prince's caſe it was thought neceſſary to bring arguments to prove it to have been a ſtatute (p. 19, b.). But if an act of Parliament may be in *that* form, ſurely it may be in the form of an ordinance; and when the accord and aſſent is expreſſed *generally*, (as in 46 Edw. III.) it may and ought to be *intended* that the Lords and Commons joined in ſuch accord and aſſent. In the place juſt cited, *Magna Charta* is ſaid to be proved to be an act of Parliament, by *implication*. To this indeed is added, " That it always hath " had the allowance of an act of Parliament, and therefore " ought to be ſo taken." But ſo (it may be ſaid) had the 46 Edw. III. till its authority began to be called in queſtion in the reign of Jac. I.

As to the words prohibiting the election of lawyers, that part of the ſtatute, (if it is one) ſeems to have fallen into diſuſe by a ſort of tacit conſent, as happened to the ſtatutes of reſidence. *Vide ſupra*, vol. i. p. 165. Note (D).

P. 50. (H) It is very difficult to account for the particular omiſſion of the " *Nolumus*," in the writ for Briſtol; but it ſeems to favour the opinion, that ſheriffs were never meant to be ineligible as *burgeſſes*.——Till 23 Hen. VI. there was no precept iſſued to boroughs, but the general writ was the only authority for the choice of all the members in the county as well burgeſſes and citizens, as knights of the ſhire. *(ſupra*, vol. i. p. 205. and p. 216. Note (C)). Briſtol having become a county in itſelf about the end of Edward III.'s reign, and a ſpecial writ being thereby neceſſary to the ſheriff of the place; ſince he had no *knights* of the ſhire to elect, it was unneceſſary, and would have been improper, if ſheriffs were eligible as *burgeſſes*, to inſert the " *Nolumus*" in his writ. But why then was it not in like manner omitted in the writs to the ſheriffs of other counties corporate? Perhaps it was. Or, perhaps, the members for other counties were, at that time, conſidered as knights of the ſhire. Thoſe for Briſtol ſoon began to be looked upon in that light. This appears by comparing together the two following very curious returns.

" *Virtute iſtius Brevis elegi & venire feci ad præſent. Parlia-*
" *mentum domini Regis apud Weſtm. in craſtino ſancti Edmundi*
" *Regis prox. futur. duos* BURGENSES *de diſcretioribus & magis*
" *ſufficientibus, qui in navigio & exercitio merchandiſarum noti-*
" *tiam habent meliorem*, VIZ. *Walterum Derby & Thomam Beau-*
" *pine.*"——This was ſoon after Briſtol was made a county.—But, in 14 Hen. IV. the return was,

" *Noverint univerſi per præſentes, quod nos Major & communi-*
" *tas villæ Briſtol., unanimi aſſenſu noſtro & conſenſu, conſtitui-*

" *mus*

" *mus & in loco noſtro poſuimus dilectos nobis in Chriſto, Thomam* " *Fiſche & Thomam Thony, comburgenſes noſtros, tam ut* MILITES " *pro* COM. *Briſtol., quam ut* BURGENSES *villæ & burgi Briſtol.* " *pro eiſdem com. villa & burgo ad eſſend. ad Parliamentum,*" " *&c.* Carew's Law of Elections, p. 94. col. 2.

It is perhaps fair to conjecture that, as ſoon as they began to be reckoned *knights of the ſhire*, the " *Nolumus*" was inſerted in the *writs*;—but this is nothing but conjecture.

P. 52. (I) This argument is uſed by Sir Simonds D'Ewes, (p. 39.) in his obſervations on the writ, and the argument on the other ſide, drawn from the neceſſity that a ſheriff ſhould reſide in his county, is ſtated by him in the ſame place, and anſwered thus, " That it was very common, formerly, for the " ſame perſon to be ſheriff, at the ſame time, for more than " one county, in which caſe he could not reſide in both, " &c." *Ibid.* and p. 336.

P. 52. (K) The Parliament of 34 and 35 Hen. VIII. met firſt, 8 Jan. 1342-3, which was the 33d year of Hen. VIII. (*Vide* Ruffh. Ed. of the Stat.) It appears, by the imperfect bundle of writs and returns for Cambridgeſhire of that year, which are the only ones that are not loſt from 17 Ed. IV. to 1 Edw. VI. (*Vide* Willis *Not. Parl.*) that North was then returned. The ſtatute referred to expreſsly mentions him as ſheriff in 34 and 35 Hen. VIII. Hence it follows that he muſt have been appointed ſheriff *after* he was choſen to Parliament. This is not noticed by Littleton.——The ſtatute is not printed in Ruffhead's edition, but is to be found in Raſtal, and in the folio black letter edition. See alſo Co. 4. Inſt. p. 46. Willis *Not. Parl.* Vol. ii. p. 139. and Prynne, Brev. Parl. Rediv. vol. iv. p. 514, 515, 516.

P. 52. (L) This Parliament met 23 Nov. 1584. (D'Ewes, p. 332.) The writs muſt have iſſued at leaſt 40 days before; for the regulation making that interval of time neceſſary was only *confirmed* by 7 and 8 Will. III. cap. 25. § 1. It *exiſted* long before, as appears from Co. 4 Inſt. p. 4. The writs, therefore, muſt have been dated, on this occaſion, at leaſt as early as 14 Oct. and the election probably took place ſome time in that month. The annual appointment of ſheriffs is on All Soul's-day, 2 Nov. It follows then, that, if Sir E. Dymock was elected at the general election, and made ſheriff at the regular time, he muſt have been in the Houſe of Commons *before* his appointment to be ſheriff.

P. 53. (M) The——Saintpole, Eſq; mentioned by D'Ewes, (*loc. cit.*) and afterwards called, by the ſame author, Mr. St. Poole, in the caſe of Nowell, (*Ibid.* p. 625.) is evidently the ſame perſon with Sampole mentioned by Whitelock, (Vol. ii.

p. 369.

p. 369, Note *e*,) with Sir Geo. Sampal, mentioned by Littleton (p. 329), and with St. Paule, in the Journals, vol. i. p. 825. col. 2.——If we can credit what is ſaid of this caſe by Littleton, who cites the Journal-book of the Houſe of Commons (ſince loſt) for his authority, Sampal was made ſheriff *after* his election to Parliament. But Littleton alſo ſtates him to have been a *burgeſs*, whereas Sir S. D'Ewes, whenever he mentions his caſe, calls him *knight of the ſhire*; and, ſince the accuracy of this laſt-mentioned author is well eſtabliſhed, and there are innumerable miſtakes (ſome of which have been pointed out) in Littleton's argument, I conclude that he did not *find* in the Journal-book, that Sampal, or St. Poole, was a *burgeſs*; nor any direct words, ſhewing him to have been made ſheriff *after* he was a member of Parliament. However, on a compariſon of dates, we ſhall find that the fact moſt probably was, that his election was antecedent to his appointment. The Parliament of 31 Eliz. was *ſummoned* to meet 12 Nov. 1588, (D'Ewes, p. 428.) although it was on that day prorogued, and did not, *in fact*, meet till 4 Feb. following. The writ, according to what has been ſaid in the foregoing note, muſt have iſſued at leaſt as early as 3 Oct. and the election probably took place before the 2 Nov. when the annual ſheriffs were appointed.

P. 53. (N) There is no ſuch name as Nin in Willis's liſts; and I ſuppoſe no ſuch perſon ever exiſted. As to him and Covert, Littleton firſt ſays, they were ſheriffs and *knights*, and then, in the ſame ſentence tells us, that Covert was member for Petersfield. Covert appears, in fact, to have been *burgeſs* for that place, by Willis's liſt of the Parliament of that year, Vol. i. p. 133.

P. 52. (O) It will be curious and intereſting, to ſee the whole entry concerning the report made on this occaſion; for, though it conſiſts only of broken hints, it ſhows that the queſtion had been then very thoroughly canvaſſed.

27 Feb. 1625-6. "Sir Jo. Finch reporteth the caſe about "the election of Sir Edward Coke: wherein the Committee "delivered no opinion.——The writ firſt read, wherein the "*Nolumus*. A ſearch, by a ſelect Committee, of the records "and precedents.—

"That, before the *Nolumus*, 46 Edw. VI.* ſheriffs eligi-"ble, and did ſerve here, as holden by ſome; and all others, "not members of the higher Houſe: Others, that ſheriffs, by "the common law, were not eligible.——Hath *cuſtodiam comi-"tatus*; ſo as his attendance neceſſary in the county: is a "judge, which cannot perform by a deputy.——That a mem-"ber of the Houſe, choſen ſheriff, ſhall ſerve; *contra* before. "—Reſembled to the caſe of one in execution.

"For

* This ſhould be Edw. III.

" For the writ; ſome, that other things in the writ, not " obſerved: *Milites, gladiis cinctos: Manucaptores: Qui inter-* " *fuerint* at the reading of the writ. By others theſe holden " to be matters of form; the other of ſubſtance: And, that " not ſafe to queſtion a writ ſo long uſed.——

" From 49 Hen. III. till 13 Edw. III. no mention of this " *Nolumus*. Then a prayer of the Commons, that no ſheriff, " or other miniſter, might be returned knight *. 46° Edw. " III. an ordinance made againſt ſheriffs, and lawyers, to be " knights of ſhires. Divers queſtions made upon this ordi- " nance: 1, Whether this ordinance an act of Parliament: " 2dly, admitting, it were no act of Parliament, yet, whether " not, in reſpect of the weight of it, and uſage, equal to an " act of Parliament.——47° Edw. the *Nolumus* came in; but " none in thoſe to the Five Ports, then, or ſithence †: Omiſ- " ſion of it alſo in ſome writs to *Briſtow*; but . . Rich. II. ‡ " came in to *Briſtow* . . Rich. the clauſe wholly as now. " 7 Hen. IV. a bill exhibited by the Commons, for a free " election, notwithſtanding any commandment, or . . to the " contrary. 8°, 10°, and 12°. no *Nolumus:* 14 Hen. IV. " the *Nolumus* came in, and continued as now.—

" Three modern precedents: 31° Eliz. St. Paule's caſe: " 42° Eliz. . . . 12° Jac. Tellye's caſe ‖; who a ſheriff for " life.——

" 1. No opinion from the Committee, delivered.

" The debate hereof reſpited till *Friday* next, vol. i. p. " 825. col. 1, 2."

On the Friday, nothing ſeems to have been done in it. Ibid. p. 829, 830.

P. 55. (P) There does not appear in Willis's liſts, any perſon of the name of Croke, who ſerved in the long Parliament, begun in 1640, and diſſolved, *de facto*, by Cromwell, in 1653. One of the two members for the city of Oxford in Cromwell's Parliament, ſummoned in 1656, was Richard Croke, and, in the Parliament ſummoned Jan. 1658-9, the two members for that city were, Richard Croke and Unton Croke. (Willis, *Not. Parl.* Vol. i. p. 277. 291.) The caſe alluded to muſt be one of theſe, and cannot be of much authority.

P. 57. (Q) This is the caſe which ſhould have been mentioned in page 209 of Vol. i. and p. 217. Note (F). The miſtake was occaſioned by the names of the candidates being the ſame

* As this is mentioned here as well as in Whitelock, it is probable there was ſuch a petition; but that there is a miſtake in the date, or roll. *Supra*, p. 68, Note (B).

† *Quære?* ‡ *Quære.*

‖ Should be *Selly's*, *vide ſupra*, p. 50.

ſame in 1766 and 1768; but, in the latter caſe, there was no queſtion about the eligibility of ſheriffs.

P. 62. (R) Mr. Hume ſays *four*, and ſeems to think that Coke was not choſen. Rapin, and other general hiſtorians, mention this tranſaction, though a matter of conſiderable conſequence, with great inaccuracy. Indeed, this is one of many proofs which might be adduced, of the inadequate account commonly given by mere hiſtorians, of events which turn on queſtions of law. Sir Edward Coke takes a particular pleaſure in remarking the blunders in the chronicles of his days. Unfortunately, their authors might, with too much juſtice, have retorted the charge upon him, with reſpect to his remarks and aſſertions, concerning many of the moſt important points of legal and conſtitutional antiquity. Even Prynne, who has been indefatigable in diſcovering blemiſhes of this ſort in the writings of Coke, has, in ſome degree, merited the ſame cenſure. (Willis, Vol. ii. Pref. p. 3. Pref. to Parl. Hiſt.)—— Thoſe who undertake the irkſome taſk of inveſtigating matters of high antiquity, and of decyphering the obſcure meaning of imperfect records, which frequently contradict each other, ought to be very indulgent towards their predeceſſors in ſuch uſeful, though unambitious, inquiries.

P. 62. (S) The real cauſe of the proſecution of Longe was that he was one of the popular members in the Parliament of 1628, and was concerned with Sir John Elliot, Mr. Selden, Mr. Hollis, Mr. Valentyne, and others, in locking the door of the Houſe, and detaining the Speaker in the chair, on the laſt day of the actual ſitting of that Parliament, after he had delivered the King's meſſage. For this offence, he was one of thoſe againſt whom a joint information was exhibited in the Star-chamber. (Parl. Hiſt. Vol. viii. p. 359, &c.) Afterwards this information ſeems to have been dropt, and Elliot, Hollis, and Valentyne, were proceeded againſt by information in the court of King's Bench. (*Ibid.* p. 376, &c. 381. 388. Cro. Car. p. 181, 182. 604 to 610.) But, it having been thought more adviſable to attack Longe on the ground of a breach of his oath as ſheriff, a new information was exhibited againſt him in the Star-chamber, the event of which is ſtated in the text. (*Vide* Parl. Hiſt. 378 to 381.)—It is ſaid, in the debates on Hatcher's caſe, by Sir Job Charlton, that Longe having anſwered that he never took the oath, the thing was changed, and he was fined for exerciſing the office without taking the oath (Grey's Deb. Vol. iv. p. 317.) This, however, is a palpable miſtake. In the interrogatories adminiſtered to him, it was charged, that he had taken the oath of ſheriff, and in his anſwer he ſaid, "He had taken an oath." Upon this, it was argued, on his behalf, that, in a criminal matter, nothing

nothing can be taken by inference, and that, there was not here a direct confeſſion, of his having taken the *particular* oath of ſheriff. The Chief Juſtices, and Lord Keeper, over-ruled this argument, and ſaid, that it muſt be intended that he had confeſſed the ordinary oath which ſheriffs ought to take, Littelt. p. 327, 328. and, accordingly, the judgment, or ſentence, proceeded on his having committed a breach of his oath. Parl. Hiſt. Vol. viii. p. 380.

XXXIV.

XXXIV.

THE SECOND

CASE

Of the BOROUGH of

IVELCHESTER,

In the County of SOMERSET.

The day appointed for chooſing this Committee was Friday the 16th of February, but, as the Houſe was not complete on that day, nor the next, the Committee was not balloted for till the Monday following.

On Monday, the 19th of February, the Committee was choſen, and conſiſted of the following Gentlemen:

Hon. John St. John, Chairman,	Members for	Eye
Joſhua Mauger, Eſq;		Poole
Philip Yorke, Eſq;		Helleſton
Sir Charles Cocks, Bart.		Ryegate
Hon. Thomas Walpole,		King's Lynn
Sir Matthew White Ridley, Bart.		Newcaſtle
William Hervey, Eſq;		Eſſex
Walter Stanhope, Eſq;		Carliſle
John Mayor, Eſq;		Abingdon
Anthony Storer, Eſq;		Carliſle
Sir Hugh Williams, Bart.		Beaumaris
Whitſhed Keene, Eſq;		Montgomery
Sir James Cockburne, Bart.		Peebles, &c.
NOMINEES.		
Of the Petitioners,		
Sir Alexander Leith, Bart.		Tregony
Of the Sitting Members,		
John Moreton, Eſq;		Wigan

PETITIONERS.

Richard Brown, Eſq; and Inigo William Jones, Eſq;

Sitting Members.

Nathaniel Webb, Eſq; Owen Saluſbury Brereton, Eſq;

COUNSEL.

For the Petitioners.

Mr. Mansfield, Mr. Alleyne.

For the Sitting Members.

Mr. Lee, Mr. Morris.

THE

THE SECOND CASE

Of the BOROUGH of IVELCHESTER.

IN conſequence of the determination of the Committee, on the 4th of December, that the former election for Ivelcheſter was void (1), a new writ was ordered (2); and, the election coming on upon the 14th of the ſame month, Mr. Webb and Mr. Brereton were candidates, together with Mr. Brown and Mr. Jones, the two petitioning candidates on the former occaſion. Webb and Brereton were returned; and on Thurſday, the 21ſt of December, a petition of Browne and Jones was preſented to the Houſe, complaining of an undue election. The day on which this petition was to be taken into conſideration, was, Monday, the 19th of February.

That morning, the parties having compromiſed the matter, Mr. Brown and Mr. Jones were deſirous of withdrawing their petition; and, as ſoon as the Speaker was in the chair, this was mentioned in the Houſe. Beſides the late inſtance in Mr. Dewar's petition, (which caſe was not exactly parallel to the preſent (3)) there had been, ſince the ſtatute of 11 Geo. III. a precedent of leave given to withdraw a petition complaining of an election, on the day appointed for taking it into conſideration. This was in the caſe of the city of London in 1774 (2) (A).

It

(1) *Infra*, p. 79. (2) Votes, p. 153. 4 Dec. 1755.
(3) *Supra*, IId Caſe of Cricklade.
(4) Journ. vol. xxxiv. p. 505. col. 2.

It was, however, ſaid, that this was directly contrary to § 4 of 11 Geo. III. cap. 42. the words of which are,

"And be it further enacted, That, on the day appointed "for taking any petition complaining of an undue election, "or return of a member or members to ſerve in Parliament, "into conſideration, *the Houſe ſhall not proceed to any buſineſs "whatſoever*, except the ſwearing of members, previous to "the reading of the order of the day for that purpoſe."

The hearing a motion for withdrawing a petition, or the giving leave to withdraw it, was, it was alledged, "*other* "buſineſs," different from the conſideration of the petition; and, by the expreſs command of the ſtatute, the Houſe was tied up from doing any thing elſe, except ſwearing of new members. Some even contended that, on the day of a ballot, there can be *no Houſe* until there are an hundred members preſent; and, that till that happen, the Speaker has no right, on ſuch occaſions, to take the chair, although, at other times, forty conſtitute a Houſe, and entitle him to take the chair.

On the other hand, it was contended, that forty members are ſufficient to make a Houſe, on ſuch a day, as well as on any other, for that there is nothing, either in the act of the 10th, or in that of the 11th of Geo. III. to alter the eſtabliſhed rule of Parliament in that reſpect. That members had been frequently ſworn in, on the days for chooſing Committees, before an hundred members were preſent; which, if there had not been a Houſe, could not have been done. It was inſiſted, that the caſe of giving leave to withdraw a petition, with conſent of the parties, was an exception to § 4 of 11 Geo. III. ariſing from the nature of the thing, and that it was, therefore, unneceſſary to make an expreſs proviſion about it. That, when once all the parties conſent to drop a cauſe, it ought to be conſidered as never having come before the Houſe, and that all the proceedings which may have taken place, as preparatory to the trial, ought, in ſuch a caſe, to go for nothing. That, to inſiſt upon appointing a Committee, would often put the parties to great expence, and that the probable effect might be to retard the buſineſs of the nation for a courſe of time. And for what end? Why, to get an hundred men together in order to ballot for a Committee, which, when choſen, would have no cauſe to try. That, if there had originally been a difficulty, from the manner in which the prohibition to proceed

ceed to other buſineſs is expreſſed in the ſtatute, the Houſe had got over it in the caſe of the city of London (5) (A), and that, the difficulty being thereby removed, that caſe was a ſufficient precedent for the eſtabliſhment of a practice ſo convenient both to the parties, and the Houſe.

The greater number of thoſe members who happened to be preſent continued of opinion that it was impoſſible for the Houſe to ſuffer the petition to be withdrawn, without a direct violation of the act of Parliament.

A Committee, therefore, was balloted for, and choſen; and, having retired into one of the Committee rooms, they appointed a Chairman; and then, inſtead of adjourning till the enſuing morning, (which, in other caſes, is always done after the election of the Chairman, and without entering upon the cauſe (6)) they directed the counſel and agents to be called in.

The petition being read, the counſel for the petitioners informed the Committee, that they had no evidence to offer to impeach the ſeats of the ſitting members.

On the ſame day, the Committee, by their Chairman, informed the Houſe (in the uſual form) that they had determined,

That the two ſitting members were duly elected (7).

(5) Journ. vol. xxxiv. p. 505. col. 2.
(6) *Supra*, vol. i. p. 28.
(7) Votes, p. 347.

NOTES

NOTES

ON THE SECOND CASE OF

IVELCHESTER.

PAGE 80, (A).

The CASE of the CITY of LONDON.

On the 13th of January, 1774, being the firſt day of the ſeſſion, the Speaker acquainted the Houſe, that, in purſuance of the ſtatute of 10 Geo. III. cap. 41. he had iſſued his warrant for a new writ for the city of London (among other places) to ſupply the place of Sir Robert Ladbroke, Knt. one of the four members, he having died during the receſs (Journ. vol. xxxiv. p. 391. col. 1.) When the election came on, the Right Hon. Frederic Bull, Eſq; Lord mayor of London, and John Roberts, Eſq; were candidates. Bull was returned. On the 26th of January, Roberts petitioned the Houſe, and his petition was appointed to be taken into conſideration on the 21ſt of February following. (Same vol. p. 415. col. 1, 2.) On the 17th of February, the order for that purpoſe was diſcharged, and a new day, *viz.* 28th of February, appointed. (Same vol. p. 468. col. 2.)

The firſt entry in the Journals, of that day, is as follows:

28 Feb. "Mr. Speaker informed the Houſe, that he "had, on Saturday laſt, received a letter from John Roberts, "Eſq; acquainting him that he deſired leave to withdraw his "petition complaining of an undue election and return for "the city of London.

"And a member, in his place, having informed the Houſe, "that he had authority from the Lord Mayor, of London, "the ſitting member, to conſent to the withdrawing the peti-"tion of the ſaid John Roberts, Eſq;

 "Ordered,

" Ordered, That John Roberts, Esq; be at liberty to with-
" draw his petition, complaining of an undue election and re-
" turn for the city of London.

" Ordered, That the order, for taking the said petition
" into consideration on this day, be discharged." (Same vol. p. 505. col. 2.)

It may be worth remarking, that this happened the very day after leave was given to bring in a bill for making the two acts of 10 Geo. III. c. 16. and 11 Geo. III. c. 42, perpetual. (Same vol. p. 505. col. 1.)

XXXV.

THE

CASE

Of the COUNTY of

FIFE,

In SCOTLAND.

The Committee was choſen on Tueſday, the 19th of March, and conſiſted of the following Gentlemen.

Frederic Montagu, Eſq; Chairman,	Members for	Higham Ferrers
Samuel Blackwell, Eſq; - -		Cirenceſter
Sir Henry Hoghton, Bart. -		Preſton
Hugh Owen, Eſq; - -		Pembroke
Sir Cecil Wray, Bart. -		Eaſt Retford
Right Hon. Thomas Townſhend,		Whitchurch
Richard Aldworth Neville, Eſq; -		Grampound
George Clive, Eſq; - -		Biſhop's Caſtle
Thomas Pownall, Eſq; -		Minehead
William Lygon, Eſq; - -		Worceſterſhire
Viſcount Liſburne, - -		Cardiganſhire
Sir John Eden, Bart. - -		Durham County
Thomas Frankland, Eſq; -		Thirſk
NOMINEES.		
Of the Petitioner.		
Coſmo Gordon, Eſq; - -		Nairnſhire
Of the Sitting Member,		
Thomas Dundas, Eſq; - -		Stirlingſhire

PETITIONER.

John Henderſon, Eſq.

Sitting Member.

James Townſhend Oſwald, Eſq.

COUNSEL.

Mr. Campbell, Mr. Elliot.

For the Sitting Member.

Mr. Croſby, Mr. Macdonald.

THE CASE

Of the COUNTY of FIFE.

AT the laſt general election, John Scot, Eſq; was choſen member of Parliament for the county of Fife; but, a vacancy having happened during this ſeſſion by his death, a new writ was iſſued, and the election took place, at Cupar, the county-town, on the 24th of January, 1776.—Mr. Oſwald and Mr. Henderſon were candidates. The former being returned as duly elected, Mr. Henderſon petitioned the Houſe on the 13th of February, (1).

On Wedneſday, the 20th of March, the Committee being met, the petition was read. It contained a detail of ſeveral of the circumſtances which happened on the day of the election, relative, both to the making up of the freeholders roll, according to the ſtatute of 1681 (2), and to the election itſelf (3). But the greateſt part of theſe it will be unneceſſary to ſtate in this place, as they were not the ſubject of diſcuſſion before the Committee.

It appeared, by the admiſſion of both parties, that, at the cloſe of the poll, Mr. Oſwald had 61 votes, and Mr. Henderſon only 60; ſo that there was a majority of one for the ſitting member.—But, as the petitioner had objected to the legality of ſeveral of the votes given for Mr. Oſwald, the *præſes* of the meeting, having joined with Mr. Henderſon in a proteſt, delivered his caſting voice (4) in favour of Mr. Henderſon.

(1) Votes, p. 313, 314.
(2) 2d Parl. Car. II. cap. 21.
(3) Votes, *loc. cit.*
(4) 16 Geo. II. c. 11. §. 13.

Henderſon. This he would have been entitled to avail himſelf of, in caſe it ſhould have turned out, on the trial of the petition, that the number of legal votes was equal on both ſides.

On entering upon the trial, the counſel for the petitioner informed the Committee, that they intended to object to two of the votes for the ſitting member; and the counſel for Mr. Oſwald ſaid, they meant to object to one of thoſe for Mr. Henderſon.—As it would have been unneceſſary for the Committee to enter upon the queſtion of the legality of this laſt-mentioned vote, if they ſhould be of opinion that the votes objected to on the part of the petitioner, were either both bad, or both good, it was agreed that they ſhould proceed firſt to hear the counſel, and decide, upon thoſe votes. It will be proper to give a ſeparate account of the facts and arguments relative to each.—The names of the two voters were Hugh Dalrymple, Eſq; and William Melvil, Eſq;

The CASE of Hugh Dalrymple, Eſq; of Fordell.

Mr. Dalrymple was enrolled at the laſt election meeting. What paſſed on that occaſion, will be beſt underſtood by the following extract from the minutes, as atteſted and ſigned by the clerk of the meeting.

"Thereafter there was preſented and given in to the "meeting a claim for Hugh Dalrymple of Fordel, Eſq; ſet-"ting forth, That the claimant ſtands infeft in the lands of "Powguild and Glenningſtone, with the parts and pendicles "thereof, lying within the pariſh of Auchterderran, and "ſhire of Fife, but redeemable from him by the Honourable "James Wemyſs of Wemyſs, at Whitſunday, 1777, or any "term of Whitſunday thereafter, on payment or conſignati-"on of 20l. ſterling, and held of the Crown, all conform to "charter of reſignation, under the Union-ſeal, of the ſaid "lands, in the claimant's favour, dated 3 July, 1776, and "to his ſeizin following thereupon, dated 21 Auguſt, 1766, "and recorded in the general regiſter of ſeizins at Edin-"burgh, the 20th day of September thereafter.

"To inſtruct (5) that the claimant's title is a proper "wadſet, there is herewith produced the diſpoſition of "the ſaid lands by the ſaid James Wemyſs in the "claimant's favour, whereupon the ſaid charter proceeds. "And, to inſtruct that the ſaid lands are above 400l. Scots

(5) Prove.

" of valued rent, there is produced a certificate under the " hands of the clerk and two commiſſioners of ſupply, bear- " ing that the lands of Glenningſtone ſtand valued, in the " ceſs-books, at 309 l. Scots, and the lands of Powguild, at " 579 l. Scots.

" Upon theſe titles, Mr. Dalrymple claims to be enrolled " in the roll of freeholders for the ſhire of Fife, having right " to vote at the election of a member of Parliament. The " ſaid Hugh Dalrymple's titles, referred to in the claim, " were alſo produced to the meeting.

" It was objected to the ſaid Hugh Dalrymple, that he " formerly claimed to be enrolled in the county, and his qua- " lification was found to be inſufficient. That he has now " again claimed upon the ſame title; and the only difference " between his preſent claim and the former one is, that he " now produces a diſpoſition from Mr. Wemyſs, of Wemyſs, " as the ground of his charter; but that this diſpoſition will " not aid him, becauſe it appears to be redeemable, and at " the ſame time is not a *proper wadſet*, which is the only " ſpecies of redeemable right which gives a vote. That it " has no reſemblance to a wadſet in any of its clauſes, and " is only *a ſale under a reverſion*, and therefore the claimant " is not entitled to be enrolled.

" To this objection it was anſwered; It is clear, from " the diſpoſition from Mr. Wemyſs, that Mr. Dalrymple is " a proper wadſetter. It is not a diſpoſition in ſecurity, or " relief, of a debt, which is reprobated by the act of 1681 " (6); for in ſuch a caſe the creditor muſt account for his " intromiſſions. But here the claimant is not only entitled " to draw the conſtant yearly profits of the lands, but alſo " every caſualty of ſuperiority, however much they may " exceed the ſum upon payment or conſignation whereof " the lands may be redeemed.

" The meeting having heard and conſidered the above " claim, and inſtructions (7) thereof, and the objection and " anſwer, and the roll being called, and the votes marked, " it was carried (60 to 58) to enrol Mr. Dalrymple; and " the meeting ordered him to be enrolled accordingly for " the ſaid lands of Powguild and Glenningſtone, being 888l. " Scots of valued rent."

The diſpoſition referred to in the foregoing extract, being the inſtrument creating the eſtate by which Mr. Dalrymple claimed a right to vote, is here ſet down at full length.

DISPOSITION,

(6) 3d Parl. Car. II. cap. 21.
(7) Proofs.

DISPOSITION,

James Wemyſs, Eſq; of Wemys, to Hugh Dalrymple, Eſq;

" I James Wemyſs of Wemys, Eſq; ſuperior of the lands " and others under-written: Whereas Hugh Dalrymple of " Fordell, Eſq; has made payment to me of the ſum of 20l. " ſterling, for my granting theſe preſents, whereof I here- " by grant the receipt, renouncing all exceptions and objec- " tions in the contrary; therefore wit ye me to have ſold, " annailzied, and diſponed, as I, by theſe preſents, ſell, an- " nalzie, and diſpone, to and in favours of the ſaid Hugh " Dalrymple, his heirs and aſſignees, heritably, but redeem- " able always, and under reverſion, in manner after-menti- " oned, all and haill the lands of Powguild and Glenning- " ſtone, with the haill parts, pendicles, and pertinents there- " of, tenants, tenantries, and ſervice of free tenants of the " ſame, all lying in the pariſh of and " ſhire of Fife, as the ſame are more particularly deſcribed " in the rights and infeftments thereof, with all right, title, " intereſt, and claim of right, which I, my predeceſſors, or " authors, had, have, or any wiſe may have, claim, or pre- " tend thereto, or any part thereof, in time coming: In the " which lands I bind and oblige me to infeft and ſeiſe the " ſaid Hugh Dalrymple, and his foreſaids, upon their own " proper charges and expences, to be holden of our Sovereign " Lord the King's Majeſty, and his royal ſucceſſors, in free " blanch, for yearly payment of the blanch duties, and other " duties, formerly payable by me for the ſaid lands, and that " by reſignation thereof; and for that effect to make, grant, " ſubſcribe, and deliver, all writs requiſite and neceſſary: " And for effectuating the ſaid infeftment by reſignation, " wit ye me to have made and conſtitute, as I, by theſe " preſents, make, conſtitute, and appoint

"

" and each of you, conjunctly and ſeverally, my very law- " ful and undoubted procurators, to the effect underwrit- " ten; giving, granting, and committing to them my full " power and commiſſion, to reſign, ſurrender, upgive, over- " give, and deliver, all and haill the ſaid lands of Powguild " and Glenningſtone, with the haill parts, pendicles, and

" pertinents

" pertinents thereof, lying as aforesaid; together with all " right, title, interest, and claim of right, which I, my pre- " decessors, or authors, had, have, or any wise may have to " the said lands, or any part thereof, in the hands of our " Sovereign Lord the King's Majesty, and his Highness's " successors, or of his commissioners having power to receive " resignations, and grant new infeftments thereupon, in fa- " vours, and for new infeftment of the same, to be made " and granted to the said Hugh Dalrymple, and his fore- " saids, heritably, but redeemable always, and under rever- " sion, as follows, *viz.* Providing always, as it is hereby " expressly agreed upon, That the lands and others above " disponed shall be redeemable, by me, my heirs and succes- " sors, from the said Hugh Dalrymple and his foresaids, at " the term of Whitsunday 1770 years, or at any other term " of Whitsunday thereafter, by payment-making to them, " or consignation for their behoof, of the sum of 20l. ster- " ling, upon premonition to be made to them forty days " preceding the term of redemption, personally, or at their " dwelling-places, in presence of a notary and witnesses, as " effeirs; and in case of absence or refusal, the redemption- " money to be consigned in the hands of the cashier of the " Royal Bank, or treasurer of the Bank of Scotland, upon " the peril of the consigner; and the place of redemption " to be within St. Giles's church, at that place where the " earl of Moray's tomb is situated; and an extract of these " presents, or of the infeftment to follow hereupon, shall be " as good, valid, and sufficient, for using the order of re- " demption, as if a particular reversion were granted on a " paper apart, with all solemnities necessary; acts, instru- " ments, and documents, one or more, in the premisses, to " ask, lift, and raise; and, generally, to do every thing " thereanent which I could do myself, if personally present, " or which to the office of procuratory in such cases is " known to appertain, promising to hold firm and stable " whatsoever my said procurator does, or lawfully causes to " be done in the premisses; and I bind and oblige me to " warrant, acquit, and defend the lands and others above " disponed, with this present disposition, and infeftment to " follow thereupon, to be free, safe, and sure, to the said " Hugh Dalrymple, and his foresaids, from all perils, dan- " gers, and incumbrances whatsoever, at all hands, and " against all deadly, as law will; excepting always from the

" foresaid

" foresaid warrandice the feu-rights and dispositions of the
" property of the foresaid lands granted by me, my prede-
" cessors or authors: And further, I by these presents, not
" only assign, transfer, and dispone, to the said Hugh
" Dalrymple, and his foresaids, the whole writs, rights, ti-
" tles, and securities, of and concerning the lands and others
" above disponed; but also the feu-duties and other casual-
" ties of superiority, payable forth of the said lands, from and
" after the term of Whitsunday next to come, and in all
" time coming during the not redemption as aforesaid;
" turning and transferring the whole right of the premisses,
" from me and my foresaids, to and in favour of the said
" Hugh Dalrymple, and his foresaids, whom I hereby sur-
" rogate and substitute in my full right and place thereof;
" impowering them to uplift and receive the said feu-duties,
" to grant receipts, discharges, and conveyances of the same,
" and, generally, to do every thing thereanent which I could
" have done myself, before granting hereof; which assigna-
" tion I bind and oblige me to warrant as follows, viz. in so
" far as concerns the writs and evidents, at all hands, and
" against all deadly, as law will; and in so far as concerns
" the said feu-duties, from my own proper fact and deed al-
" lenarly, done or to be done by me, in hurt and prejudice
" hereof: And I have herewith delivered up to the said
" Hugh Dalrymple the following writs, viz. Extract dispo-
" sition of the lands above disponed, by the deceased James
" Earl of Wemyss, in my favour, therein designed his third
" lawful son, dated the thirteenth day of July, and registrated
" in the books of session the 17th day of August, 1754 years;
" Charter under the great seal, and instrument of resignation
" thereon, both in my favours, dated the 6th of August, and
" year last mentioned, and instrument of seisin following
" upon the said charter in my favour, dated the 15th, and
" registrate in the general register of seisins kept at Edin-
" burgh, the 20th day of August, and year also last menti-
" oned; all to be kept and used by the said Hugh Dalrym-
" ple and his foresaids, as their own proper writs, in all time
" coming. And I consent to the registration hereof in the
" books of council and session, or any other judges books
" competent, therein to remain for preservation; and there-
" to I constitute

" my procurators. In witness whereof, these presents are

" wrote

" wrote upon this and the three preceding pages of ſtamped " paper, by Francis Strachan, clerk to David Anderſon " writer to the ſignet, and ſubſcribed by me, at Wemyſs- " houſe, the 6th day of May, 1766 years, before theſe " witneſſes, William Murdoch and George Aedie, both my " ſervants.

JAS. WEMYSS."

Will. Murdoch, Witneſs.
George Aedie, Witneſs.

Mr. Dalrymple having been admitted on the roll, and his vote, of courſe (8), received, Mr. Henderſon, and certain other freeholders of the county, preferred a petition and complaint, to the court of ſeſſion, within the time limited by the ſtatute of 16 Geo. II. cap. 11. § 4. (*viz.* 6 Feb.) praying that his name might be expunged; and the cauſe being argued, both at the bar and in printed memorials, or *factums*, according to the practice of that court, a decree was made, (7 March) by which the objections to the vote of Mr. Dalrymple were over-ruled, and the complaint diſmiſſed. On this, a reclaiming petition (A) was preſented, and, by that means, the cauſe was brought to a re-hearing; but there had been no new deciſion, when the merits of the election came to be tried by the Committee.

The counſel for Mr. Henderſon objected to the legality of Mr. Dalrymple's vote on two grounds.

I. They contended, That the eſtate created by the diſpoſition from Mr. Wemyſs, was a redeemable right, not within the exception of the ſtatute of 12 Anne, ſtat. i. cap. 6, and, therefore, deprived of the right of voting, by that ſtatute.

The preamble of the ſtatute recites,

" That of late ſeveral conveyances of eſtates had been " made in truſt, or redeemable for eluſory ſums, no ways " adequate to the lands, on purpoſe to create and multiply " votes in elections of members to ſerve in Parliament, for " that part of Great Britain called Scotland, contrary " to the true intent and meaning of the laws in that be- " half."

And, by § 3. it is enacted,

" That no infeoffment taken upon any redeemable right " whatſoever, (except *proper wadſetts*, adjudications, or " appriſings,

(8) 16 Geo. II. c. 11. § 16.

" appriſings, allowed by the act of Parliament relating to " elections, in 1681,) ſhall entitle the perſon ſo infeoft, to " vote, or be elected, at any election in any ſhire or " ſtewartry."

II. In the ſecond place, they contended, That the ſeiſin given to Mr. Dalrymple, in conſequence of the diſpoſition from Mr. Wemyſs, was, on the face of the inſtrument of ſeiſin, void.

It appeared, by that inſtrument, that, agreeably to the forms of the Scotch law, (which retains, in a great meaſure, the ancient feudal ſolemnities in the conveyance of real property) one Robert Reid had acted as attorney for Mr. Dalrymple, and one John Morris as ſheriff ſpecially conſtituted for the purpoſe of performing the ceremony of delivering ſeiſin, by virtue of the precept contained in the charter. That Reid, in the capacity of Mr. Dalrymple's attorney, had produced the charter, and the precept therein contained, and had delivered them to Morris the ſheriff, requiring him to perform his office. That the ſaid ſheriff had received the charter into his hands, and delivered it to the notary-public, to be read and explained to the witneſſes, which, accordingly, the notary did.—Then come the following words:

" *Poſt cujus quidem &c.* præfatus *Robertus Reid* vicecomes " *in hac parte ſibi inde commiſſa, ſtatum & ſaiſinam hereditariam, ſed redimabilem ſemper, & ſub reverſione modo præ-* " *dict. pariter & poſſeſſionem actualem, realem & corporalem,* " *totarum, &c. aliaque ſupramentionat.* dict. Hugoni Dal- " rymple, *per deliberationem terræ & lapidis fundi dict.* " *terrarum, in manibus dict. Johanis Morris,* tanquam " actornati antedict. *ſecundum tenorem dict. cartæ, & præ-* " *cepti ſaiſinæ ſupra-inſert. inibi content. & diſpenſationes* " *content. indict carta, dedit, tradidit, pariterque deliberavit.* " *Super quibus omnibus & ſingulis, dict. Johannes Morris,* " tanquam actornatus antedict. *a me, notario publico, hoc* " *præſens publicum inſtrumentum, ſeu plura publica inſtru-* " *menta, ſibi fieri petijt.*"

The inſtrument imports, therefore, that Robert Reid, who appeared as attorney for Dalrymple, acted as *ſheriff* in delivering ſeiſin, and that John Morris, who appeared as ſheriff, acted as *attorney* in receiving it (B).

Theſe

These facts and circumstances were necessary to be stated previous to the arguments of the counsel, which were as follow:

COUNSEL for the petitioner.

Ist Point.] The statute of 1681, which is the groundwork of the laws concerning the election of the members for counties in Scotland, in ascertaining what sort of estates shall give a right to vote, specifies adjudications and apprisings, after the expiration of the legal reversion (*i. e.* the time within which it is competent to the original proprietor of the land to redeem it) and *proper wadsets* (1). No particular provision was then made, or thought necessary, to deprive *other* redeemable rights, or trust estates, of the right of voting. But, as a seat in Parliament grew daily more and more an object of ambition, or interest, it became a practice, among persons possessed of large estates, to parcel them out in portions of sufficient valuation to carry a vote, among their friends and dependents, but reserving to themselves a power by which, as soon as the turn was served, they might recal this shadow of property which they had conveyed away.

It is easy to see that the consequence of this abuse necessarily was, to throw the election of the members into the hands of a few men of overgrown fortunes; and they too were commonly peers. The evil was grown so exorbitant towards the end of the reign of Queen Anne, that the interposition of the legislature was necessary, to put a stop to it. Accordingly, a law passed, depriving all trust estates and redeemable rights whatsoever of the rights of voting.—There was, however, an exception in favour of such adjudications and apprisings as were allowed by the act of 1681, and of *proper wadsets*. Adjudications and apprisings, after the law has precluded the original tenant from the power of redemption, are, in truth, no longer redeemable, and so the only sort of redeemable right to which a right of voting was allowed by the statute of Queen Anne, was a *proper wadset*. It will, therefore, be incumbent on the counsel for the sitting member, to shew that Mr. Dalrymple's estate is a *proper wadset*, in order to support the legality of his vote. They will, probably, not contend here, as was done in the court of

(1) 3 Parl. Car. II. c. 21.

of ſeſſion, that a *ſale* under reverſion, or, according to the expreſſion of the Roman law, *ſub pacto de retrovendendo*, the intereſt of the vendee in ſuch eſtate being leſs, or not more, precarious than that of a wadſetter, is not within the ſpirit or meaning of the ſtatute. The proper way to anſwer this would be to read the words of the ſtatute; for it is impoſſible to underſtand thoſe words otherwiſe than that every redeemable right whatſoever, which is not a proper wadſet, is thereby deprived of the right to vote.

It is not difficult to explain why the exception in favour of wadſets took place. Formerly, before the introduction of commerce, and the eſtabliſhment of banks, almoſt the only way of raiſing money was by the impignoration of land, and the way of paying the intereſt of the debt was by ſuffering the lender to receive the rents. When he received them *unaccountably*, as the phraſe is; that is, when he was to truſt to the rents for his intereſt; to enjoy the benefit, if they exceeded the regular intereſt, and to undergo the loſs, if they fell ſhort, paying the public burthens at the ſame time, then his eſtate was called a *proper wadſet*. If, on the contrary, he was to account for the rents to the borrower, and only deduct his regular intereſt, when there was an exceſs, or to receive what was neceſſary to make it up, when there was a deficiency (as is the practice in the caſe of heritable bonds, the common form of landed ſecurity in modern times), then his eſtate was called an *improper wadſet* (1).

There were many circumſtances which contributed to continue the poſſeſſion of eſtates, thus impignorated, in the hands of the wadſetter. As they were often pledged for their full value, it was hardly the intereſt of the *reverſer*, for ſo the perſon entitled to redeem is called in the law of Scotland, to repay the ſum and reſume the eſtate. The ſcarcity of money made it difficult to raiſe, in any other way, what was neceſſary for that purpoſe. In the Highlands, as the wadſetters were generally perſons belonging to the clan, and the reverſer the chieftain, this ſort of relation formed a bond of union betwixt them, which it would have been dangerous and impolitic to diſſolve. By theſe means it happened, that, in 1681, and even at the beginning of the preſent century, a great deal of the property in Scotland was held in the form of wadſets, and, as the proper wadſetter was, while the

(1) Erſk. Fol. Inſt. p[illegible], 302.

the eſtate continued unredeemed, in every reſpect the complete owner of the land, it was thought juſt, in 1681, to admit him, inſtead of the reverſer, to vote for the commiſſioner of the ſhire, and, in the 12th of Queen Anne, to continue what had been provided in that reſpect by the former ſtatute. But the caſe has altered extremely ſince that time. Wadſets of bare ſuperiorities (2), when the act of Queen Anne paſſed, were totally unknown. Now, on the contrary, wadſets of any other kind are equally unknown. An example of a *bona fide* wadſet of lands, as a ſecurity for money lent, or created for any other purpoſe but that of making a fictitious vote, ſcarcely exiſts at this day in Scotland.—The ancient wadſets continued longeſt in the northern counties, for the reaſons already given; but the event of the laſt rebellion, and the meaſures ſince purſued, having in a manner put an end to the clans, the great men found it both ſafe and advantageous to redeem the remaining wadſets on their eſtates, which they accordingly did.

If the legiſlature had foreſeen the groſs abuſe which was to be made of the exception in favour of proper wadſets, in the ſtat. of 12 Anne, no reaſonable man can entertain a doubt, but that, at that time, they would have taken care by a proper and explicit proviſion, to prevent it. But, as that was not done; and, as votes, for naked ſuperiorities (3), and wadſets of ſuperiorities, have been determined to be legal by the court of ſeſſion, and the Houſe of Lords, it is now, perhaps, too late, for any other authority but that of Parliament, to invalidate them. However, ſince votes of this ſort are clearly fictitious, contrary to the true ſpirit of the act of Queen Anne, and founded on a mere legal fraud, the Committee, who are the proper judicature for the interpretation of that act, will expect that a redeemable right of a ſuperiority ſhould apear evidently and indiſputably to be a *proper wadſet*, before they will determine that the holder of it is entitled to vote.

Beſides the natural jealouſy which this court ought to have of all attempts to invade the ſubſtantial rights of electors, by the creation of fictitious votes, the eſtabliſhed rules of conſtruction require particular ſtrictneſs in deciding the preſent

(2) *Vide ſupra*, vol ii. p. 175. Note (B).

(3) It was admitted that Mr. Dalrymple's eſtate was only the *ſuperiority*.

ſent queſtion. The general proviſion of the ſtatute is, that no redeemable right in lands ſhall communicate a right to vote. From this general proviſion, proper wadſets are excepted. Now, it is a ſettled maxim of the law, that, where there is a general proviſion and a particular exception, the proviſion ſhall receive as *large* a conſtruction, and the exception as *ſtrict* an one, as the words will bear.

But, when the nature and eſſential qualities of a proper wadſet are explained, according to the authority of the beſt writers on the law of Scotland, it will be evident that they are entirely wanting to Mr. Dalrymple's eſtate, which is not a wadſet, but a right by ſale, under redemption.

A wadſet being, as has been already mentioned, an *impignoration* of land, although there is perhaps no technical form of words neceſſary to conſtitute ſuch a right, yet it muſt appear, from the inſtrument by which it is conveyed, that it is a *pledge*, and that the reverſer and wadſetter ſtand in the relation of *debtor* and *creditor* to each other. Hence it muſt be ſtated, either that the land is *granted in wadſet*; or that it is conveyed in conſequence of *money advanced, or lent*; or it muſt be called *a ſecurity*; or the deed muſt contain a clauſe *of requiſition*, empowering the wadſetter or lender to redemand his money. Such a power, particularly, is of the very eſſence of a *wadſet*; and, if there is no direct clauſe to that effect, it muſt, at leaſt, appear from the purview of the inſtrument. In ſhort, there muſt be words in it ſufficient to aſcertain the relation of borrower and lender between the two parties. Where *that* clearly appears on the face of the deed, words, otherwiſe importing a *ſale*, will not prevent its being a *wadſet*; but, if there is nothing importing ſuch a relation, and words of *ſale* only are uſed, then it is impoſſible to conſider it as any thing elſe but a complete ſale. This is exactly the caſe of the diſpoſition to Mr. Dalrymple, which is in the form of a deed of ſale, and contains none of the expreſſions juſt ſtated, nor others tantamount to them. There is in it a covenant for the delivery of all the title-deeds to Mr. Dalrymple. This is conſtantly the practice in the caſe of ſales; but, in wadſets, the reverſer retains the deeds, and only ſtipulates to deliver them, if required. In like manner, there is no covenant with regard to the payment of the expences attending the tranſaction, in caſes of ſale; and there is no ſuch covenant in the deed in queſtion; but, in loans, it is always provided, that the borrower ſhall pay the expences.

In

In Dallas's Styles, we find the form of a proper wadſet ſet forth, to which the diſpoſition to Mr. Dalrymple bears no more reſemblance than it does to a contract of marriage. The precedent in Dallas recites, that money had been *advanced* to the reverſer, to enable him to pay his debts, in conſideration of which he "*ſells, annalzies, and diſpones*," &c. And, among other circumſtances characteriſtic of a *loan* and *pledge*, there is, as well as the clauſe of redemption, a ſpecial clauſe of *requiſition*, by which, if the wadſetter ſhould chuſe to call for his money, the reverſer is bound to repay it, and take back his land (4).

In the ſame manner Lord Stair, in his Title of wadſets, conſiders them as pledges in ſecurity for money, and calls the reverſer the *debtor* (5); and, from § 22 of that Title, it is evident that he conſiders the power of requiſition in the wadſetter or creditor as eſſential to a wadſet.

In the Supplement to Spottiſwoode's Styles, which is a book of conſiderable authority, we find the ſame idea of a wadſet. The deſcription there given of it is, that "It is a "right whereby lands, or others paſſing by infeftment, are "*impignorated for the ſecurity of a ſpecial ſum* (6)." After this definition, the form of a wadſet is given, in which the eſtate granted is *called* a wadſet, in the body of the deed; and it likewiſe contains an expreſs clauſe of requiſition.

IId Point.] By the law of Scotland, when an eſtate is conveyed from one to another, the charter granted by the ſuperior to his new vaſſal muſt contain (7) what is called a precept of ſeizin; that is, a command from the ſuperior to his *bailie*; or, where the ſuperior is the King, to a ſheriff particularly conſtituted for that purpoſe (8), to give ſeizin of the eſtate to the vaſſal or his attorney, by the delivery of the proper ſymbols. The execution of this precept is certified by an inſtrument of ſeizin, *i. e.* the atteſtation of a notary-public, that poſſeſſion was truly given in purſuance of the precept. The inſtrument of ſeizin recites the whole ceremony obſerved on taking the infeftment, which is as follows: Firſt the vaſſal, or his attorney, appears on the lands, and,

(4) Dallas. Styles, p. 709, to 718.
(5) B. 2. Tit. 10.
(6) Tit. iii. §. 3. p. 139.
(7) By ſtat. 1672, cap. 7.
(8) By ſtat. 1540, cap. 77. 1555. cap. 34. and 1606. cap. 15.

and, delivering the precept to the baillie or ſheriff, it is by him delivered, in the preſence of witneſſes, to the notary, who reads it; after which, the bailie, or ſheriff, delivers to the vaſſal, or his attorney, earth and ſtone of the lands. Then the vaſſal, by himſelf or his attorney, *takes inſtruments* in the hands of the notary, (that is, requires an atteſtation of him,) before the witneſſes, that he hath received ſeizin in due form. The inſtrument of ſeizin, containing, as was juſt mentioned, the hiſtory of this tranſaction, being drawn up by the notary, he ſubjoins an atteſtation of the truth of the facts, and it is then ſubſcribed by him and the witneſſes.

From the form and ſolemnity of this writing, it is apparent, that it is, and is intended by the law to be, the only evidence of the ſeizin; and, whenever any palpable defect or abſurdity in the manner of giving the ſeizin is ſtated on the face of the inſtrument, it muſt be inferred that the ſeizin ſo given was void; and that the new vaſſal never was put into *legal* poſſeſſion of the eſtate. Now ſuch an abſurdity does appear on the face of the inſtrument of ſeizin in the preſent caſe; for it recites that Robert Reid, who was Mr. Dalrymple's attorney, and ought to have received ſeizin from John Morris, the ſheriff, delivered ſeizin to Morris; that is, the intended vaſſal delivered the ſymbols of poſſeſſion to the ſuperior. It is manifeſt, that ſuch an act could not veſt the poſſeſſion in a man, who, not being ſeized, was to have received ſeizin from his intended ſuperior. In ſhort, the whole tranſaction was a mere nullity. That there are advantages attending the feudal forms of changing the poſſeſſion of lands, is generally admitted even by the lawyers of this country (9), where they have in a great meaſure fallen into diſuſe: Be that, however, as it may, while they continue part of the law of Scotland, they muſt be adhered to, becauſe a deviation from them in one inſtance, would be a precedent for relaxation in others, and, in the end, would beget the utmoſt confuſion and diſorder.

As Mr. Dalrymple, therefore, does not appear ever to have had legal ſeizin, or poſſeſſion of the eſtate, his vote muſt be diſallowed on that ground, even if the eſtate, meant to be conveyed to him, had been of ſuch a nature as would have entitled him, when ſeized, to the privilege of voting.

(9) Bl. vol. ii. p. 337, 342.

The late deciſion of the court of ſeſſion on this ſubject, though it will not be pretended that it can bind the concurrent and ſuperior juriſdiction of this Committee, may perhaps be urged as an authority which ought to weigh here; being the judgment of a court competent to the trial of the cauſe, and converſant in queſtions of this ſort. To obviate any advantage the counſel for the ſitting member may hope to derive from it in that light, it will only be neceſſary to relate the manner in which the judgment was given, and what paſſed in the court on the occaſion.

(☞ Here the counſel for the ſitting member inſiſted, that it was improper to go into the hiſtory of what had paſſed in the court below, as it depended upon facts, which could only be proved by evidence; and that ſuch evidence would be incompetent, as entirely immaterial to the cauſe. The counſel for the petitioners anſwered, by ſaying, that they did not mean to produce evidence of thoſe facts, but merely to ſtate them as matter of argument, agreeably to the conſtant practice in courts of juſtice, when it is thought neceſſary to invalidate the authority of any caſe, by an account of particular circumſtances attending the determination.

The Committee over-ruled the objection, and directed the counſel for the petitioner to proceed.)

When the cauſe came to be decided at Edinburgh, there were but 11, of the 15 judges, preſent on the bench. The lord preſident being abſent, the ſenior judge, by the conſtitution of the court, was to preſide, and had the right of a caſting vote in caſe of an equality *. It happened, that the judge, to whom that province then fell, had voted for the ſitting member at the election; that is, he had done what amounts to the ſame thing; for he, and another voter, in the intereſt of the petitioner, had agreed both to be abſent. It is evident, from the act of Parliament under which the Committee ſits, that the ſenſe of the legiſlature is, that perſons having voted at an election, ought not to ſit in judgment upon the merits of ſuch election. Such a perſon, if a member of Parliament, is, by the ſtatute of 10 Geo. III cap. 16. (1), expreſsly excluded from being choſen of a Committee, appointed

* In the court of ſeſſion, the preſident, or judge preſiding in his room, has no vote, unleſs when the other judges on the bench are equally divided.

(1) § 6.

appointed to try the merits of any petition complaining of the election at which he had given his vote. However, as there is no direct provision to prohibit a lord of session, who votes at an election, from acting as judge in a cause on the decision of which the fate of the election is, in the event, to depend, the gentleman alluded to, not only concurred in the judgment, but, in fact, determined the cause, by means of his casting vote. Both points having been argued at once, several of the lords delivered their opinions; and that judge expressed himself in such a manner, that the by-standers, who heard him, understood, that he did not think Mr. Dalrymple's estate a proper wadset. When the votes came to be collected, the question should have been general, in the terms of the petition, to this effect, "Shall Mr. Dalrymple be expunged from, or continue on, the freeholders roll?" But it being proposed that separate questions should be put on each of the two points, *that* extraordinary method was adopted; and, the first question being, 'Whether the seizin was valid or void," it was determined to be valid, by a majority of six to four. Then the second question was put, on the validity of the objection to the estate of Mr. Dalrymple; and, there being a division of five to five on that point, the presiding judge gave his casting vote in favour of Mr. Dalrymple; contrary to the sentiments he was understood to entertain when he delivered his opinion. Upon comparing the votes on the two questions, it appeared that an unquestionable majority of the lords, thought (some, because the estate was not, in their opinion, a proper wadset; some, because they considered the seizin as void) that Mr. Dalrymple had no right to be on the roll. Yet, by a strange solecism, arising from the making separate questions on the two points, when the general question came to be put, the following interlocutor was pronounced:

"The lords having considered this petition, and complaint, "&c. repel the objections, and dismiss the complaint."

The impropriety of this mode of deciding a cause, cannot escape the Committee; and the numerous and gross inconveniencies which would flow from it, will occur, without being particularly pointed out. The business of a court of judicature is, to determine the rights of the parties to the suit, not to moot, and decide, abstract points of law; but, according to the method adopted in this case, it is evident, that a party might have the whole court, without one dissenting

voice, in his favour, and yet the judgment be given for his opponent. Every ſeparate argument might be made the ground of a ſeparate queſtion; and, if there were 11 points or arguments, 11 judges, and a ſingle judge againſt the oppoſite party on each point; and therefore, each of the 11, upon a *general* queſtion, obliged in conſcience to vote againſt him; yet 10 being for him on each *ſeparate* point the deciſion would be in his favour. The courts of law in England, aware of this manifeſt abſurdity, never ſeparate the points of a cauſe, when they come to give judgment; but, each judge acting upon his own reaſons, and delivering thoſe reaſons, if he ſo thinks fit, the judgment is given, *generally*, for the plaintiff or defendant (C).

COUNSEL for the ſitting member.

In order to enter properly on the preſent argument, it will be of uſe to trace, in a few words, the progreſs of the juriſdiction for the trial of queſtions concerning the election of commiſſioners for ſhires in Scotland.

In 1597, by a ſtatute of that year (2), it ſeems to have been the intention of the legiſlature of that country, to give ſome degree of judicial power, with regard to elections, to the lord Regiſter, for he was, thereby, authorized to reject commiſſions (*i. e. returns*) which appeared not to be properly executed. There is no account, however, to be found in the records, of his ever having executed that authority; nor, indeed, can any veſtiges of controverted elections be diſcovered, before the act of 1681 (3) put the rights of election, and every thing relating to that ſubject on a new footing. From that time, all diſputes concerning titles to vote, were in the firſt inſtance, to be tried in the meeting of freeholders; and, if the parties were not ſatisfied with their deciſion, they were to be then carried to Parliament. The Parliament of Scotland being a court of common law, there was no impropriety that ſuch diſputes ſhould be tried there, even when they did not affect, or ariſe on the occaſion of any particular election.—At the ſame time, a ſubſidiary juriſdiction was beſtowed on the court of ſeſſion when the Parliament happened not to ſit, which, in thoſe days, was frequently the caſe.

The law continued till 16 Geo. II. when a new juriſdiction was beſtowed on the court of ſeſſion, the former having been,

(2) Cap. 276. (3) Cap. 21.

been, in a manner, annihilated by the frequency of Parliaments after the Union.—It is remarkable that the ſtatute, giving this new juriſdiction, ſays nothing about the Houſe of Commons. It has, therefore, been a matter of doubt, whether that member of the legiſlative body poſſeſſes the appellate authority, which was formerly lodged in the Scotch Parliament, relative to the qualifications of freeholders. In the caſe of Clackmannan, determined laſt year, the Committee thought that they were bound by the limitation in the ſtatute of 16 Geo. II. cap. 11. (4). It may be queſtioned whether they were, or were not, right, in that opinion; however, according to their reſolution, it muſt follow, that Committees are equally bound by the whole of the act; and, therefore, it deſerves the conſideration of the preſent Committee how far they can, conſiſtently with the uniformity of deciſion, entertain the preſent queſtion concerning Mr. Dalrymple's vote, after a judgment of the court of ſeſſion.

One of the proviſions of the ſtatute of 1681 was, that no objections to a freeholder's being on the roll ſhould be competent in the appellate juriſdiction, which had not been taken, and ſtated formally in writing, in the court of freeholders. The point of the ſuppoſed defect in Mr. Dalrymple's ſeizin, was never mentioned at the election-meeting; nor was it inſerted in the petition and complaint, nor ever ſtarted in the court of ſeſſion, till the counſel for the petitioner mentioned it, *ore tenus*, on the day when the cauſe came to be decided. If, therefore, the above-mentioned proviſion were ſtill in force, that point could not have been brought, by any complainants, either before the lords of ſeſſion, or the preſent Committee.

By ſect. 4. of 16 Geo. II. cap. 11. the power of complaining of a perſon's being on the roll is given to freeholders, though *not preſent* at the Michaelmas or election meeting (5). It is a fair inference from this clauſe, that it is competent to *abſent* freeholders to make objections not ſtarted at ſuch meeting, and, with regard to *them*, therefore, the court of ſeſſion has been in the right in conſtruing this clauſe as a repeal of the proviſion of 1681, and as giving themſelves an *original* juriſdiction on the complaints of ſuch perſons. But is it not ſtraining the ſtatute of 16 Geo. II. to extend it to the

(4) *Supra*, vol. ii. p. 174.
(5) *Supra*, vol. ii. p. 172.

the complaints of freeholders, who were preſent at the meeting, ſo as totally to repeal part of the act of 1681 by nothing elſe but mere implication ?—If that ſtatute is ſtill in force, with regard to freeholders *preſent* at the meeting, the queſtion concerning the ſeizin was not, at the time it was made, competent to the court of ſeſſion (6).

There is another reaſon why it was not then competent to them. By the ſtatute of 16 Geo. II. c. 11. §. 4. it was enacted that the perſon complained of ſhould have 30 days notice of the complaint, which term is now reduced to 15 days by 14 Geo. III. cap. 81. §. 1. But, in the preſent caſe, there was not time to comply with this rule, or give the proper notice, as to the complaint concerning the ſeizin, and therefore, on that ground, the court of ſeſſion ought not to have gone into it.

We ought, therefore, to look upon it as never having been before them, and, if this reaſoning is juſt, the deciſion *muſt* have been in favour of Mr. Dalrymple, even if there had been but one queſtion put, in the manner contended for by the counſel for the petitioner.

But, at all events, as the queſtion concerning the title came before the court of ſeſſion, on an appeal from the court of freeholders, and the other queſtion, as a matter of original juriſdiction, it was peculiarly incumbent on the court of ſeſſion to ſeparate the points. Indeed, the practice, ſo far from being extraordinary, is very common in that court, of which numberleſs proofs might be given (7).

When that mode of proceeding ought to prevail, and when it ought not, muſt depend on the particular circumſtances of the caſe ; but it would be eaſy to put caſes, where a degree of injuſtice and abſurdity would be the conſequence of not ſeparating the queſtions, equal to what the counſel on the other ſide ſuppoſe neceſſarily to follow from ſeparating them. If, for inſtance, in the preſent cauſe, the queſtion had been put *generally*, and the deciſion had been to expunge Mr. Dalrymple from the roll, ſtill, as it happened, a majority of the court would have thought that his eſtate was a proper wadſet, and a majority alſo would have thought his ſeizin good ; and, if two different cauſes had come afterwards to be

(6) Mr. Henderſon, and the other complainants, were admitted to have been *preſent* at the election meeting.

(7) Several inſtances were mentioned, *vide infra*.

be tried, in one of which the ſole queſtion was on a wadſet like the preſent, and, in the other, on a ſeizin alſo like the preſent, the majority of the court in each of thoſe cauſes muſt have decided in favour of the defendant, though the *neceſſary* inference from their deciſion in Mr. Dalrymple's caſe would have been, either that his eſtate was not a proper wadſet, or that his ſeizin was void.

Committees of elections follow this method, of ſplitting a cauſe into ſeparate queſtions, every day; and even the preſent Committee has done ſo, at the deſire of both parties, by reſolving to decide upon Mr. Dalrymple's vote and Mr. Melvill's diſtinctly from Mr. Loch's (8), although the general queſtion for them to determine is, Whether Mr. Oſwald or Mr. Henderſon is duly elected.

As to the obſervations which have been made on what fell from the preſiding judge in the court of ſeſſion, when he gave his opinion, he was, undoubtedly, miſunderſtood by the friends of the petitioner, who, wiſhing to hear him deliver ſentiments favourable to their cauſe, interpreted certain metaphorical expreſſions in a ſenſe in which they certainly were not meant.

Upon the whole, therefore, what has been ſaid, to diminiſh the weight of the deciſion in Scotland, being removed, the Committee, no doubt, will give to that deciſion all the authority it merits as the judgment of a court competent to, and converſant in, ſuch ſort of queſtions.—It is now fit to give ſome anſwer to what has been ſaid on the two points.

Iſt Point.] The whole of the reaſoning of the counſel for the petitioner, on this point, proceeds on *data* which are not true. They ſuppoſe that there muſt be a borrower and lender, a loan and debt, to conſtitute a wadſet. Now this is not ſo. A wadſet may be created without a loan; it may be a ſecurity for a gratuitous gift; and it was, in former times, when money was ſcarce, the common ſecurity for the portions of younger children.

There is nothing, in the very authors they have cited, which confines a wadſet to a ſecurity for a loan. Both Lord Stair, and the author of the Supplement to Spottiſwoode, call it merely a *ſecurity*, and do not ſay a word about *loan*. Stair's Inſtit. B. ii. tit. 10. Preamble, Suppl. to Spottiſ. p. 139.

Neither

(8) The voter whoſe right was diſputed on the part of the ſitting member.

Neither is there any mention of a *loan* in the deſcription of a wadſet given by Sir George Mackenzie. Inſtit. *lib.* ii. *tit.* 8. §. 3.

The notion that a power of requiſition is neceſſary to conſtitute a wadſet, is founded on the idea of a loan, but, in caſes where a wadſet is given to a ſon, in ſecurity for his portion, ſuch a power cannot be ſuppoſed; and, indeed, though a clauſe of requiſition is found in many of the more modern precedents, yet it is ſo far from being eſſential, that, in the earlier periods of the law of Scotland, no ſuch clauſe was ever introduced, becauſe it was never the intereſt of the wadſetter to reſtore the land, and take back his money. Lord Stair was, in 1681, preſident of the court of ſeſſion, ſo that he muſt be underſtood to have been acquainted with the meaning of "*proper wadſet*" in the ſtatute of that year, and he, in the Title juſt cited, §. 2. has theſe remarkable words:

"The ordinary wadſet is by infeftment of property, or of "annual-rent, the conception whereof is not under the "name of impledging, impignoration, hypothecation, or "the like, but in the terms of *diſpoſition*, or infeftment, "whereby the property of the thing wadſetted paſſeth, and is "eſtabliſhed in the wadſetter: but under *reverſion* to the con-"ſtituent, whereby it hath two parts; the *infeftment*, and the "*reverſion*. The *infeftment* in wadſets is, in all points, "like to other infeftments whether, they be infeftments of "property, or of annual-rent, or whether they be public, "holden of the conſtituent's ſuperior, or baſe, holden of "the granter himſelf; *ſo that all ſpecialties of wadſets reſolve "in the reverſion.*" That is, the reverſion or power of redemption, is the only eſſential characteriſtic of a wadſet; and the diſtinction between a proper wadſet and a redeemable ſale, or a ſale *ſub pacto de retrovendendo*, is, that, in the former, the grantor may redeem at any unlimited time; in the latter, he only can within a particular period.

Here we find, in Lord Stair, the Lord Coke of Scotland, what overthrows the whole ſyſtem of the counſel for the petitioner. We are told by that great judge, that no marks of impignoration are required, and that the reverſion is the only neceſſary characteriſtic.—As to the paſſage they have cited from him (9), he does not at all ſay there, that the power

(9) *Supra*, p. 96.

power of requiſition is eſſential; he only mentions *that*, among other methods, which he is enumerating, whereby a wadſet may be deſtroyed. Sir G. Mackenzie (1), informs us, and it is well known, that wadſets formerly conſiſted of two diſtinct inſtruments, the reverſion being ſecured to the grantor by a ſeparate deed, but neither does he mention the clauſe or power of requiſition, as making part of either of the deeds. Craig's authority, *lib.* ii. *diag.* 6. §. 27, entirely coincides with that of Lord Stair and Mackenzie's.

The doctrine of the petitioner's counſel is not leſs contradicted by decided caſes, than by the opinions of the beſt authors.

The caſe of Mr. Munro of Culcairn, determined by the court of ſeſſion, in 1745, is exactly in point to the preſent. That gentleman obtained a charter, and was infeft, and afterwards inrolled, as a freeholder of the county of Roſs; but a complaint was preferred againſt him, objecting, that his right was not a *proper wadſet*. An interlocutor being pronounced in his favour, a moſt elaborate reclaiming petition was prepared by his counſel, a lawyer of very eminent abilities. It was particularly inſiſted, That his eſtate appeared, by the charter granted to him by his father, to be deſtitute of certain neceſſary requiſites common to all wadſets, both proper and improper; namely, that there ſhould be a borrower and lender, a debtor and creditor, a ſum ſpecified to be advanced by the wadſetter, and a clauſe of requiſition, empowering him to demand his money. Yet this reclaiming petition was diſmiſſed by the court, without any anſwer being put in by the oppoſite party.—The recital of the diſpoſition by Mr. Monro's father only alleged the grant to be made "*for certain onerous cauſes, and conſiderations moving* "*him*," without ſaying a ſyllable of any loan or advance of money; and the words "wadſet, or pledge," never occur in it, but, inſtead thereof, the common terms of a deed of ſale.—When this caſe was cited in the court of ſeſſion, the anſwer given to it, was, "The deciſion is wrong;" A very eaſy way, to be ſure, of getting rid of a ſtubborn authority. But what ſhews that, at the time, it was not thought wrong, is that it was never appealed from to the Houſe of Lords, but was acquieſced in by the loſing party.

In the caſe of Galbraith againſt Cunningham, determined the 17th of January, 1775, the objection was, that there was no power of requiſition; but that too was over-ruled. The anſwer

(1) *Loc. cit.*

ſwer given below to this caſe was, "That it is not fully re-"ported (2);" but of this no manner of proof was adduced.

The caſe of John Stirling, Eſq; againſt Archibald Campbell, Eſq; (father to one of the counſel for the petitioner) turned upon a queſtion concerning what was eſſential to conſtitute a proper wadſet. It was determined, in the court of ſeſſion, 6th March, 1754 (3), and, on an appeal, the decree was affirmed in the Houſe of Lords, 2 April, 1754 (4). In the reaſons for the reſpondents, in this caſe, a deſcription of a proper wadſet is given, which correſponds entirely with the diſpoſition in favour of Mr. Dalrymple.

(☞ The counſel read part of the reaſons from the printed Caſe.)

To the authority of the beſt writers, and of the caſes cited, we ſhall be able to add the teſtimony of a very eminent conveyancer in Scotland, who will prove, that the deed of conveyance to Mr. Dalrymple is perfectly conſonant to the *formula* he makes uſe of, when he is employed to draw a proper wadſet (5).

IId point.] If the reaſoning in the foregoing part of the argument is concluſive, it is as little competent to the Committee, now, to go into this point, as it was to the court of ſeſſion, when the cauſe came before them. However, upon examination, the queſtion will appear to be founded on an objection which cannot prevail before any tribunal.

In Scotland, there are forms, or precedents, ready made, of inſtruments of ſeiſin, as there are of bonds and other legal inſtruments, in this country; and they are always drawn with blanks for the names of the ſpecial attorney and baillie or ſheriff, that they may be filled up as the occaſion requires.

Before the ſtatute of 1617, cap. 16, for the regiſtration of ſeiſins, greater accuracy was required with regard to the execution of the precept, that being, at that time, the only means of ſecuring the notoriety of the infeftment. Hence, in the earlier deciſions on defects of form in the livery of ſeiſin, greater ſtrictneſs was neceſſary, and was obſerved, than ſince the eſtabliſhment of regiſters. From that period, the

(2) Deciſions of the court of ſeſſion, from 1752 to 1756, p. 186 to 188.

(3) Deciſions of the court of ſeſſion, from 1752 to 1756. p. 152 to 155.

(4) Caſes in the Houſe of Lords.

(5) *Vide infra*, p. 84, 85.

the proper and ſureſt evidence of the infeftment has been, the regiſter; and the court of ſeſſion, and particularly the Houſe of Lords, have, of late years, been much leſs ſcrupulous with reſpect to mere clerical miſtakes in inſtruments of ſeiſin. In the preſent caſe, if the blanks had not been filled up, there is no doubt but the ſeiſin would ſtill have been valid; and, this being ſo, according to the maxim of "*ſuperflua* "*non nocent*," the error in writing one name for another, in ſome of the blanks, cannot vitiate what would have done without any name at all.

Caſes, where objections founded on ſimilar miſtakes, have been over-ruled, might be cited in great number: Some, where the miſtake was with regard to the proper *ſymbol*; others, where it regarded the *place* of the infeftment; and others, again, where it was, as here, in the *name*.

In the Caſe of Gordon of Hallhead againſt Brodie, and others, there were two objections. 1. That, in the inſtrument of ſeiſin, the notary had not declared, that the baillie had uſed the proper ſymbols, for the inſtrument only mentioned, "*earth and ſtone* FOR *the lands*," without ſaying OF "*the lands*." 2. That no mention was made, that *ſeparate* infeftment had been given for lands ſtated to be *diſcontiguous*, though the law requires ſeparate infeftment in ſuch a caſe. The court of ſeſſion over-ruled both objections; and, on a reclaiming petition, adhered to their firſt decree.

The caſe of Douglas of Douglas againſt Chalmers, was ſhortly this. Robert Chalmers and John Crawford were to receive ſeiſin of certain lands, the firſt as *life-renter*, (*i. e.* tenant for life) the ſecond as *fiar*, *i. e.* remainder-man in fee (6)). John Wilſon appeared as attorney for both; and the inſtrument of ſeiſin ſet forth, That the baillie "*Statum et* "*ſeiſinam hereditariam, pariter ac poſſeſſionem actualem, realem,* "*et corporalem, dict. Joanni Crawford, hæredibus ſuis et aſ-* "*ſignatis quibuſcumque, hereditarie et irredimabiliter totarum et* "*integrarum, &c. per traditionem terræ et lapidis, &c. dicto* "*Joanni Wilſon, tanquam actornato pro et in nomine dict. Ro-* "*berti Chalmers, et Joannis Crawford, pro reſpectivis eorum ju-* "*ribus, vitalis redditus et feodi antementionat.*"

Here

(6) The eſtates of life-renter and fiar, bear a pretty near reſemblance to thoſe of tenant for life, and remainder-man in fee.—There are, however, many particulars in which they differ.

Here the name of the life-renter was omitted, in writing out the inſtrument of ſeiſin; and, although the giving poſſeſſion to the party is the very eſſence of the ſeiſin, the objection, after having been, at firſt, allowed by the court of ſeſſion, was, on a reclaiming petition, and a better conſideration of the queſtion, over-ruled.

There is an old caſe reported by Dirleton, (Hilton againſt Lady Chynes, 214. Tit. 1676,) "Where, a ſeiſin being "objected to, becauſe it ſtated both the baillie and attorney "to be the ſame perſon, who could not *give* and *take* in"feftment; the court of ſeſſion, in reſpect it did appear "evidently, that it was a miſtake of the notary, ſeeing, by "the firſt part of the ſeiſin, it was clear, there was a diſtinct "attorney, who did preſent the ſeiſin to the baillie, did there"fore incline to ſuſtain the ſame."

In the caſe of Livingſtone againſt Lord Napier, there was the following miſtake in the inſtrument of ſeiſin. In the firſt part, John *Bryce* was ſtated as attorney, or procurator, and, afterwards, it was ſaid, that poſſeſſion, &c. had been given, by deliverance to the ſaid John *Burn* (a name not mentioned before) as procurator for, &c. of earth and ſtone &c. An objection taken on this ground was over-ruled by the court of ſeſſion, and, on an appeal, by the Houſe of Lords (7).

4th March, 1768, The Houſe of Lords reverſed a judgment of the court of ſeſſion, in the caſe of Ogilvie againſt Skene and Hunter, where that court had held a ſeiſin void, becauſe the inſtrument did not ſtate, that *diſtinct* ſeiſin had been given for the different parts of *diſcontiguous lands*.—It is obſervable, that, both in this, and the foregoing caſe of Livingſtone and Lord Napier, the points were ſeparated (D).

In a very late inſtance, where the validity of certain votes carved out of Lord Fife's eſtate was called in queſtion, both in the court of ſeſſion and the Houſe of Lords, it was ſo well underſtood that objections of the preſent ſort had no chance of ſucceſs, that, although the votes were very liable to ſuch objections, and all other ſorts of points were made, no notice was taken of the mere formal defects in the inſtruments of ſeiſin.

☞ To ſhow, that the form of Mr. Dalrymple's diſpoſition was ſimilar to other precedents of proper wadſets, uſed in the preſent practice, one Mr. Mitchelſon, a conſiderable conveyancer

(7) 3 March, 1762.

conveyancer at Edinburgh, was produced as a witneſs, by the counſel for the ſitting member. But, as deeds drawn by conveyancers, if not brought into a court of juſtice, and confirmed by a legal determination, can be of no authority, I have thought it unneceſſary to give any account of his evidence.

COUNSEL for the petitioner, in reply.

If the Committee were to hold that they have no juriſdiction in the preſent caſe, the obvious conſequence would be, to throw the whole right of deciding upon the ſeats of the members of the Houſe of Commons for Scotland, into the Houſe of Peers. But ſuch a doctrine cannot be ſeriouſly maintained.

It is natural to ſuppoſe, that this court will be more ſcrupulous and jealous interpreters of the laws againſt fictitious votes, than the Houſe of Lords. While that Houſe has, in deciding upon appeals, ſhown a great latitude on queſtions of this ſort, the Houſe of Commons, on ſeveral occaſions, has diſcovered a very different ſpirit. Thus, in the caſe of the county of Dunbarton, 23 Jan. 1724-5, they oppoſed an attempt to multiply votes, by granting undivided ſhares of the ſame ſuperiority, by two reſolutions, which are to be found in the Journals (8). This caſe is cited, not from any ſimilarity of the point to that in the preſent cauſe, but for the ſake of principle; and to ſhew that, if they can, the Committee ought to ſet aſide a vote which is clearly fictitious, and againſt the ſpirit of the acts for ſecuring the freedom of elections.

It has been ſaid, that a loan is not neceſſary to the idea of a proper wadſet. Perhaps it is not; but certainly there muſt be a debtor and creditor, to conſtitute a wadſet, and a wadſet muſt be a pledge in ſecurity for a debt. There are ways of conſtituting debts without loan, as in the caſe of a proviſion for a younger ſon. There, although the younger ſon does not lend the money for which he obtains the wadſet, yet undoubtedly the reverſer is his debtor, for the ſum, and he holds the land as a pledge for the ſecurity of it.

Thus Lord Stair, and the author of the Supplement to Spottiſwoode, deſcribe a wadſet as a ſecurity; and this is admitted to be a proper deſcription by the counſel on the other ſide. But can it be contended, that, in the preſent caſe, there

(8) Journ. vol. xx. p. 378. col. 2.

there is any thing characteriſtic of a ſecurity? What is the ſum advanced? Only twenty pounds. Yet, if this a *boná fide* tranſaction, the wadſetter, as ſuperior, is entitled to a year's rent of the lands from every new *ſingular ſucceſſor*, (*i. e. purchaſer*, according to the *legal* ſenſe of that word in Engliſh) and the rent of the eſtate is about 400l. a year. Will it be imagined, or can a court of juſtice intend, that a man of Mr. Wemyſs's fortune, would pledge ſo valuable a property for the ſum of twenty pounds?

One of the counſel on the other ſide alleged, that the diſtinction between a proper wadſet and a redeemable ſale, is that, in the firſt, the power of reverſion is perpetual, in the latter, limited to a certain time (9). But in this he is miſtaken. The parties to a ſale may annex any condition to it they pleaſe; and, in fact, the reverſion in wadſets is often limited; and, in fictitious ſales, ſuch as the preſent, it never is.

To the authorities already cited, may be added that of the legiſlature of Scotland, to ſhow that wadſets depend on the idea of a debtor and creditor. By the ſtatute of 1661. cap. 2. which is entitled, "An act for ordering (*i. e.* regulating) "the payment of debts, betwixt creditor and debtor;" the wadſetter is expreſsly called the *creditor*, and the heritor (or reverſer) the *debtor*.

In the Hiſtorical Notes of Lord Kaimes, annexed to his abridgment of the ſtatutes, he obſerves, on the act of 1469, cap. 27. "that though a *wadſet* is a redeemable right, it is "very different in its nature from redeemable ſales, menti-"oned in that ſtatute. In a *wadſet*, whether the land be "held of the ſuperior or the grantor himſelf, no more is un-"derſtood to be conveyed than a *pledge*, or real ſecurity "for money (1)."

With regard to the caſes cited, they do not apply. The deed, in the caſe of Monro, was made in 1707, before the ſtatute of 12 Anne, and, as that ſtatute had no retroſpective effect, the vote of Mr. Monro, though founded on a redeemable ſale, was not affected by it.

In Galbraith againſt Cunningham, the only objection was, the want of an *expreſs* clauſe of requiſition. To this it was anſwered, that there was enough on the face of the deed

(9) *Supra*, p. 80.
(1) Note 16. p. 439-440.

deed to *imply* a power of requiſition; and the petitioner admits, that ſuch implication is ſufficient. It has been thought prudent to make only a partial quotation from the caſe of Stirling againſt Campbell, becauſe that caſe, taken altogether, makes directly againſt Mr. Dalrymple's vote, and ſhows that the uſual form of a proper wadſet is ſomething very different from the deed of Mr. Wemyſs in his favour.

In the printed anſwers to the reclaiming petition, are cited as inſtances of proper wadſets, although they contain no power of requiſition, expreſſed or implied, a number of grants for the purpoſe of voting, particularly thoſe carved out of Lord Fife's eſtate. But, as to them, it is to be obſerved, that though they were the ſubject of litigation, both at Edinburgh and in the Houſe of Lords, the preſent point was not once agitated.

In ſhort, there is no deciſion or caſe in point to ſupport Mr. Dalrymple's vote; and there is a very late judgment of the court of ſeſſion directly againſt him; namely in the caſe of Mr. James Hamilton.

Sir Archibald Edmonſtone conveyed an eſtate for the purpoſe of giving a qualification to vote, to his brother Captain Edmondſtone, in life-rent, and James Hamilton, Eſq; in tail-male. In the diſpoſition there was this clauſe: "Re-"deemable always, and under reverſion, the ſaid lands, &c. "in ſo far as concerns the fee thereof, &c. from the ſaid "James Hamilton, the fiar, and the heirs male of his body, "by payment to them, or lawful conſignation for their be-"hoof, of the ſum of 10 marks Scots, at and upon the term "of Whitſunday next, 1772, or at any other term of "Whitſunday, or Martinmas thereafter, &c."

Here, although the right of redemption was perpetual, and all other requiſites of a proper wadſet were to be found in the deed, yet becauſe, as in the preſent caſe, there were no words giving a right of requiſition, neither expreſsly nor by implication, the court of ſeſſion, after having at firſt over-ruled the objection to the vote, on more mature conſideration, ordered Mr. Hamilton to be expunged from the roll.

The authorities cited, in anſwer to the ſecond objection, are none of them directly in point: if they were, there are others to oppoſe to them, where blunders like the preſent have been held to be fatal. The Committee will therefore think themſelves at liberty to exerciſe their diſcretion, and will

will be glad to have it in their power to lay hold of any defect in point of form, in order to ſet aſide a vote ſo clearly fictitious as that of Mr. Dalrymple. The cauſe of Livingſtone and Lord Napier comes neareſt the preſent; but there is this material difference, that the only miſtake *there* was in one of the ſurnames, an imaginary one, "*Burn*," being ſubſtituted inſtead of "*Bryce*;" but the Chriſtian name was not miſtaken; and that alone, prefaced by the relative "*ſaid*," was a ſufficient deſcription of the perſon.

In the Caſe of Mac Leod of Cadboll, &c. againſt Roſs of Prieſthill, &c. determined ſo lately as 18 Feb. 1768, Sir John Gordon conveyed to Roſs in life-rent, and to Gordon in fee, three parcels of land. 1. Part of Eaſter Aird and Eaſter Tarbat. 2. Part of the lands of St. Martin's. 3. Part of the eſtate of Meickle Tarrel. In the inſtrument of ſeizin, the notary only mentioned that infeftment had been given of the lands of Eaſter Aird, Eaſter Tarbat, and St. Martin's. He neglected to mention Meickle Tarrel. This defect did not occur to the parties, or their counſel; but, being mentioned from the bench (E), it was allowed by the court, though there was the greateſt reaſon to imply, from the latter part of the inſtrument, that infeftment had been given of the whole lands; for it concluded thus: *Acta erant hæc ſuper fundum omnium et ſingularum partium ſeu portionum prædictarum terrarum de Eaſter Aird, Eaſter Tarbat, et* MEICKLE TARRELL, *reſpectivè et ſucceſſivè, &c.* (2).

When the counſel for the petitioner had finiſhed, the counſel on the other ſide, having a right to obſerve on the new authorities they had produced, took notice, that the caſe of Dunbarton, in the Journals, had no kind of analogy to the preſent queſtion, and that even that of Hamilton did not apply to the preſent caſe; for that the lands were, in that caſe, conveyed to one perſon in life-rent, and to another in fee; which was a very anomalous right, and inconſiſtent with the nature of a proper wadſet. That it was an abſurdity to create a life-rent upon a right redeemable at Whitſunday, 1772, or any ſubſequent Whitſunday or Martinmaſs. That it was likewiſe

(2) Wight on Elections, p. 207, 208 If there is no miſtake in this quotation from the inſtrument of ſeizin, in Mr. Wight's book, the lands of *St. Martin's* muſt have been omitted in this part of the inſtrument.

wiſe an abſurdity, for the fiar to claim a vote as a *wadſetter*, when he neither did, nor could, draw any profits from the eſtate during the life of a life-renter; and that it muſt be preſumed that thoſe were the grounds on which the judgment turned, in that caſe.

The CASE of William Melvill, Eſq; of Griegſton.

At the election-meeting for the county of Fife, 2 Jan. 1752, William Melvill, Eſq; was enrolled as a freeholder, "in right of his wife, Margaret Bonnar of Griegſton, who "was heireſs of entail of the lands of Griegſton, and ſtood "infeft therein by virtue of a charter from the Crown, in "favour of the ſaid Margaret, and the deceaſed Thomas "Graham, her firſt huſband, dated 31 Jan. 1724, and of "ſeiſin following on the ſaid charter, regiſtered in the ge-"neral regiſter, 19 March, of the ſame year.—The lands "appeared, by the valuation-books, to amount to 461l. "of yearly valued rent."

By the ſtatute of 1681. cap. 21. Huſbands are entitled to be enrolled, and to vote, for the freeholds of their wives, (though they have no infeftment in their own perſon,) if the wife is infeft (3).

At the laſt election-meeting, when the roll came to be reviſed, an objection was taken to Mr. Melvill's continuing upon it. The proceedings on the occaſion are thus entered in the minutes.

"Then Mr. Niel Ferguſon gave in the following objec-"tion in writing, *viz.* I Niel Ferguſon, advocate, object "to Mr. Melvil of Griegſton, That he is denuded of the "title upon which he ſtood upon the roll, his wife, in "whoſe right he was enrolled, having diſponed her eſtate "to her ſon Capt. Graham of Greigſton, who is in poſſeſ-"ſion of the ſame, and ſets tacks (4) as fiar, and draws the "rents; in evidence of which a tack is herewith produced. "—And he is called upon to ſay, if this is not the fact.

"(Signed) NIEL FERGUSON."

"And the ſaid Mr. Melvil being preſent in court, and "being enquired, if he would make anſwer to the objecti-"on? refuſed to make any, but was willing to take the oath "of truſt and poſſeſſion: And Mr. Cunninghame anſwered

(3) Wight, p. 216. (4) Leaſes.

" to the objection, That the objection was not relevant,
" and could not be proved by any other evidence than a
" deed under his (Graham's) own hand, and a deed under
" the hand of a third party was no proof againſt him.

" And the vote being put to expunge William Melvil, or
" not, and the roll being called, and votes marked, it was
" carried (62 to 27) not to expunge him."

To ſupport the objection, a leaſe was produced at the meeting, granted by Captain Graham, in which he deſcribed himſelf as fiar of the eſtate, and entitled to make leaſes during his mother's life.

A petition and complaint was preſented to the court of ſeſſion, complaining of this deciſion of the court of freeholders, at the ſame time with the complaint againſt Mr. Dalrymple's vote. The objection in the complaint was the ſame as that taken at the election-meeting. It was overruled by the unanimous opinion of the judges.

The deed, by which Mr. Melvil was alleged to be denuded of his eſtate, was produced to the court of ſeſſion, and is here printed from an admitted copy delivered in to the Committee.

ASSIGNATION.

Margaret Bonnar and William Melvill, to Captain John Graham.

" I Margaret Bonnar, ſpouſe to William Melvill of Eaſ-
" tef Pitſcottie, heritable proprietor of the lands after men-
" tioned, and pertinents, with conſent of my ſaid huſband;
" and I the ſaid William Melvill, for myſelf, my own
" right and intereſt, with conſent of, and taking burden,
" upon me for, my ſaid ſpouſe; and we both, of one con-
" ſent and aſſent, conſidering that Captain John Graham,
" eldeſt lawful ſon procreated of the marriage between me
" the ſaid Margaret Bonnar and Thomas Graham, ſurgeon
" in Cupar of Fife, my former huſband, has not only ad-
" vanced and paid to and for us, the ſum of 400l. ſterling
" money, but alſo granted ſecurity for payment to us, and
" the longeſt liver of us, during all the days of the longeſt
" liver's life, of an annuity of 20l. ſterling money yearly,
" at the terms therein mentioned, for and on account of
" our granting theſe preſents, in manner under written:

" Therefore

" Therefore we, of one conſent and aſſent, and taking bur-
" den as aforeſaid, hereby *aſſign and diſpone*, to and in fa-
" vour of the ſaid Captain John Graham, and his heirs and
" aſſignees whomſoever, all and ſundry *the rents, mails,*
" *duties, and emoluments, kains, cuſtoms, and caſualties, yearly*
" *due, and payable for, and forth of, all and* whole the town
" and *lands of Greigſton*, with the parſonage-teinds thereof
" included, parts, pendicles, tofts, crofts, houſes, muirs,
" marſhes, coals, coal-heughs, and other pertinents thereof
" whatſoever, lying within the pariſh of Cameron, and
" ſheriffdom of Fife, *belonging in property to me the ſaid Mar-*
" *guret Bonnar*, and that for all the days and years of my
" life, from and ſince the term of Whitſunday laſt, in the
" year 1765; ſurrogating and ſubſtituting the ſaid Captain
" John Graham, and his above-written, in our right, title,
" and place of the premiſſes; with full power to them to
" output and input tenants in the aforeſaid lands, with the
" pertinents; and for that effect to iſſue, and cauſe execute,
" precepts of warning againſt the ſaid tenants and poſſeſſors,
" either in their own or our names, as they ſhall think expe-
" dient; and thereupon to obtain decreets of removing and
" ejection, and to put the ſame to due and lawful execution;
" and to intromit with, *uplift, charge for, and diſcharge, the*
" *rents, mails, duties, and other caſualties and emoluments of*
" *the ſaid eſtate hereby aſſigned and diſponed*; and, in gene-
" ral, all and ſundry other things, in relation to the pre-
" miſſes, to do, in the ſame manner, and as freely and ab-
" ſolutely in all reſpects, that we, or either of us, could
" have done before granting of this preſent right and aſſig-
" nation; which we bind and oblige us, and our heirs and
" executors, to warrant to be good, valid, and ſufficient,
" to the ſaid Captain John Graham, and his foreſaids,
" from our reſpective facts and deeds done or to be done,
" in prejudice hereof, and no further: And to the intent
" the ſaid Captain John Graham, and his above-written,
" may be the *more effectually enabled to levy and recover pay-*
" *ment of the rents, duties, and others, hereby aſſigned and*
" *diſponed*, and to proſecute and follow forth any action of
" removing, when neceſſary, that may be commenced and
" inſiſted in againſt the tenants and poſſeſſors, either in
" their own or our names, we have herewith delivered up
" to the ſaid Captain John Graham the charter under the

" great ſeal, of the aforeſaid lands of Greigſton, *expede*
" *in favour of me the ſaid Margaret Bonnar, with the in-*
" *ſtrument of ſeiſin following thereon*, &c. Dated 8th
" March, 1766."

The counſel for the petitioner inſiſted,

That, on the face of this deed, it appeared, that Mr. Graham was thereby put in poſſeſſion of the eſtate, and therefore, as poſſeſſion, either in his own right, or that of his wife, was neceſſary to entitle Mr. Melvill to remain on the roll, and to vote, both by the ſtatute of 1681, and more particularly by 7 Geo. II. c. 16, he had no longer any legal right to be conſidered as a freeholder. That, although he had taken the oath preſcribed by the ſtatute (5), they were ſtill at liberty to call his poſſeſſion in queſtion; as you are at liberty to prove a man to have been bribed who has taken the bribery oath preſcribed by 2 Geo. II. cap. 24. That Graham could never be conſidered merely as a leſſee, becauſe his mother had executed a judicial ratification of the conveyance to him, which is never done in the caſe of a leaſe, ſuch an act being in the nature of a fine levied by a feme covert in England.

On the other ſide it was contended,

That Graham was a mere leſſee; That though he might have the natural poſſeſſion of the eſtate, ſtill the legal, or civil poſſeſſion continued in the father and mother; That the feudal connection between them and the Crown remained unaltered; and that the land would be forfeited by an act of treaſon committed by the wife, but could not be forfeited by the treaſon of the ſon.

The counſel having finiſhed their arguments, the Committee took ſome time to deliberate; after which the counſel were called in, and the Chairman informed them that the Committee were of opinion,

That Hugh Dalrymple, Eſq; of Fordell, and William Melvill, Eſq; of Griegſton, had a right to vote at the laſt election of a member to ſerve in Parliament for the county of Fife.

Upon

(5) 7 Geo. II. cap. 16. §. 2.

Upon this, the counſel for the petitioner ſaid they would not give the Committee any farther trouble.

On Friday, the 22d of March, the Committee, by their Chairman, informed the Houſe, that they had determined,

That the ſitting member was duly elected (6).

(6) Votes, p. 510.

NOTES

ON THE CASE OF

FIFE.

PAGE 90. (A). A reclaiming petition is ſomewhat ſimilar to a petition for a rehearing.

P. 91. (B.) There was a third objection taken by the counſel for the complainants, in the court of ſeſſion. By Mr. Dalrymple's charter, the term when the power of redemption was to commence, was Whitſunday, 1777. By the diſpoſition, Whitſunday 1770. This point, like that concerning the validity of the ſeizin, was not raiſed at the election-meeting. It was contended, before the court of ſeſſion, That Mr. Dalrymple, by acquieſcing under the judgment of the freeholders in 1767, had admitted that the charter and infeftment alone were not ſufficient to entitle him to be put on the roll; and that the production of the diſpoſition, as the warrant for the charter, was requiſite; and that now, when that diſpoſition was produced, it appeared, that the charter was granted without a warrant; becauſe a charter conveying land, redeemable in 1777, and not till then, could not be authoriſed by a diſpoſition of land redeemable in 1770; that the complainant had a right to ſuppoſe, that the diſpoſition, which was the warrant for the charter, had been ſuppreſſed, and another ſubſtituted in its place, to ſerve ſome purpoſe beſt known to the parties.

In anſwer, it was ſaid,

That the production of the diſpoſition was unneceſſary, becauſe the nature of the right appeared ſufficiently from the charter. That, in queſtions of inrolment, all the evidence required is the inveſtiture by which the claimant is received as the King's vaſſal; and that this conſiſts only of the charter under the great ſeal, and the ſeiſin conſequent upon it. That, however, it was evident, from a compariſon of the diſpoſition and the charter, that the one was the warrant of the other; for that the procuratory of reſignation, contained in the diſpoſition, was regularly executed, accepted

accepted of, and a new ſignature made out, which was ſubſcribed by the Barons of the Exchequer, and the King's cachet adhibited. That, in the ſignature, the term of redemption is agreeable to that in the procuratory of reſignation, *viz.* 1770. That the date and diſpoſitive clauſe in the diſpoſition are recited in the ſignature, and alſo in the charter, and that the only variance is the addition (by a miſtake of the clerk) of the word "*ſeptimo*" in the charter, which is not found in the diſpoſition, the ſignature, or the record in the King's Remembrancer's office. Finally, that, at any rate, this objection being of what is called *jus tertii*, as between Mr. Dalrymple and the freeholders of Fife, *they* had no right to take cognizance of it, nor the court of ſeſſion, in a cauſe brought from the court of freeholders before them. That the variance as to the term for the commencement of the reverſion was a matter that only concerned the reverſer and wadſetter; and that, whether the lands were to become redeemable in 1770, or 1777, the qualification of Mr. Dalrymple, as a voter, would be equally good.

The court of ſeſſion ſeems to have given no opinion on this matter. It was, I preſume, abandoned by the counſel for the complainants, before the cauſe came to be decided, otherwiſe it muſt have made a third ſeparate queſtion.—The reclaiming petition takes no notice of it, and it was only mentioned hiſtorically, but not argued, before the Committee.

P. 100. (C.) In confirmation of what is here alleged, ſee the caſe of the Earl of Shrewſbury againſt the Earl of Rutland, on a writ of error to the court of King's Bench, Hill. 7 Jac. 1. (1. Bulſtrode, 4. to 11). In that caſe three errors were aſſigned, yet, though in delivering their opinions there were three out of five * judges who agreed with the Court of Common Pleas on each ſeparate point, the judgment was reverſed.—From the report of the caſe, the propriety of ſeparating a cauſe, where there are different points, into diſtinct queſtions, appears to have been fully argued; and the court held that it ought not to be done.

To aſcertain which of the methods is the right one, or in what caſes the one ſhould be followed, and in what caſes the other, ſeems to me a problem of very great nicety, and very difficult to ſolve.

P. 108. (D.) The caſe of Ogilvie, againſt Skene and Hunter, does not ſeem applicable on the preſent occaſion; for the chief queſtion in that caſe was not, whether a miſtake in drawing the inſtrument of ſeizin (livery being ſuppoſed to have been properly given) ſhould vitiate the ſeizin, but, whether a diſpenſation, in a charter, from the neceſſity of giving ſeparate local ſeizin

* The court at that time conſiſted of five judges. Black. Com. vol. iii. p. 40.

ſeizin of diſcontiguous lands, was, or was not, valid, under th particular circumſtances of the caſe, ſo as to render a genera ſeizin, which had been given, ſufficient. *Vide* Collection of Caſes in the Houſe of Lords.)

P. 112. (E.) In the report of this caſe of Macleod againſt Roſs, it is not mentioned, whether the complainant was, or was not, preſent at the freeholder's-court. If he was preſent, this is an authority againſt what was argued by the counſel for the ſitting member (*ſupra*, p. 102), *viz.* that new objections are not competent in the court of ſeſſion, or before a Committee, to perſons who were *preſent* in the court of freeholders.

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IN the two firſt volumes of this collection, I thought it neceſſary, in order to complete the Hiſtory of the Caſes of Hindon and Shafteſbury, to give an account of the proceedings in the Houſe of Commons during the firſt ſeſſion of the preſent Parliament, in conſequence of the ſpecial reports of the Committees by whom thoſe two cauſes were tried (1). It is equally neceſſary, for the ſame reaſon, to lay before my Readers an account of the continuation of thoſe proceedings in the ſubſequent ſeſſions; as well as of the proſecutions, which the Houſe ordered to be carried on by his Majeſty's Attorney General, againſt the perſons who were the objects of the ſpecial reports. This I have therefore done, in the following Supplements to the two above-mentioned Caſes.

(1) Supra, vol. i. p. 91 to 100. vol. ii. p. 150 to 153.

SUPPLE-

SUPPLEMENT

TO THE

CASE OF HINDON.

VOL. I.

CASE IV.

ON the 8th of May, 1775, the Houſe had reſolved, that they would take the ſpecial report of the Committee who tried this cauſe into further conſideration, as early as poſſible in the next ſeſſion of Parliament, and that in the mean time, no warrant ſhould be ordered for a new writ (1)——On the ſame day the orders were made for the proſecution of the four candidates, as they have been ſtated in the hiſtory of the caſe (2).

At the beginning of the ſubſequent ſeſſion, on Thurſday, the 2d of November, 1775 (the Parliament having met on the 26th of October), an order was made, for taking the ſpecial report into conſideration on Monday, the 29th of January following (3); and, at the ſame time it was alſo ordered, That Mr. Speaker ſhould not iſſue his warrant for the making out a new writ, for electing burgeſſes to ſerve in Parliament, for the borough of Hindon, before the 29th of January (4).

Monday,

(1) Votes, 8 May, 1775. p. 645, 646.
(2) *Supra*, vol. i. p. 99.
(3) Votes, p. 43.
(4) *Ibid.*

Monday, the 29th of January, 1776,——The conſideration of the report was put off till the Wedneſday following (1).

Wedneſday, the 31ſt of January,—The order of the day for that purpoſe being read, the Houſe proceeded to take the report into conſideration, and it was read. Then an order was made, That leave ſhould be given to bring in a bill for the ſame purpoſes with the two which had been brought in, during the former ſeſſion (2); and a Committee was nominated for preparing and bringing it in, conſiſting of the ſame gentlemen who conſtituted the Committee appointed to bring in the ſecond bill, in the former ſeſſion (3).

Monday, the 5th of February.—Mr. Dundas having preſented the bill (4), the ſame proceedings were had as in the former ſeſſion, when the ſecond bill was preſented (5), and the ſame perſons ſeverally ordered to attend, on the ſecond reading.---The ſecond reading was fixed for the 19th of February (6).

Monday, the 19th of February.---Before the order of the day for the ſecond reading of the bill was called for, three petitions, of different ſets of electors, were preſented and read (7), containing allegations nearly to the ſame effect with thoſe in the three firſt petitions preſented on the 26th of April in the preceding year (8). Theſe petitions were ordered to lie on the table until the bill ſhould be read a ſecond time; and leave was given to the petitioners in the firſt, (who complained of the bill as an extraordinary and injurious criminal proſecution,) to be heard againſt it by their counſel, on the ſecond reading (9).

The order of the day and the bill itſelf being now read, the counſel for the petitioners juſt mentioned (Mr. Batt), was heard againſt it (10); after which it was committed to

(1) Votes, p. 212.
(2) *Supra* vol. i. p. 92, 94, 95.
(3) *Ibid.* p. 94.
(4) Votes, p. 240.
(5) *Supra*, vol. 1. p. 94.
(6) *Ibid.*
(7) *Ibid.* p. 168.
(8) *Supra*, vol. i. p. 95, 96.
(9) Votes, p. 346.
(10) *Ibid.* p. 347.

to a Committee of the whole Houſe, and the Friday following appointed for the Houſe to reſolve itſelf into that Committee (1).---The other two petitions were ordered to be referred to the Committee of the whole Houſe, and leave given to the petitioners to be heard, by themſelves or their counſel, againſt the bill (2).---The ſeveral perſons ordered, on the 5th of February, to attend this day, were again ordered to attend on the Friday (3); and this *joint* order with regard to them, was repeated during the reſt of this ſeſſion, whenever the proceedings in this buſineſs were adjourned to a future day.

Friday, the 23d of February.---A petition of ſeveral voters for the borough of Hindon, was preſented, and read; ſetting forth, That the petitioners had attained the age of twenty-one years ſince the laſt election, and ſince a petition had been preſented on behalf of near fifty of the inhabitants of the ſaid borough not included in the bill brought into the Houſe to incapacitate certain perſons from voting for members for the ſaid borough; and praying that nothing might paſs into a law that could, in any degree, affect the intereſt of the petitioners as free voters for the ſaid borough (4).

This petition was referred to the Committee of the whole Houſe (5).

On the ſame day, the order for that purpoſe being read, the Houſe reſolved itſelf into a Committee on the bill; and, Mr. Elwes being appointed Chairman, they made ſome progreſs; after which the Speaker reſumed the chair, and it was reſolved, That the further conſideration of the bill ſhould be proceeded on, in a Committee of the whole Houſe, on the Thurſday following (6).

On Thurſday, however, (the 29th of February) the order of the day being read, The Committee of the whole Houſe was poſtponed till that day ſeven-night (7).

Thurſday,

(1) Votes, p. 347.
(2) *Ibid.* 347, 348.
(3) *Ibid.* p. 348.
(4) *Ibid.* p. 374.
(5) *Ibid.*
(6) *Ibid.*
(7) P. 396.

Thurſday, the 7th of March.---The Houſe reſolved itſelf into a Committee on the bill; and, after ſome time ſpent therein, the Speaker reſumed the chair; and the Houſe adjourned, without appointing any future day for proceeding further in this buſineſs (1).

On the day following (*viz.* Friday, the 8th of March,) Tueſday, the 19th of March, was fixed, for the Houſe to reſolve itſelf again into a Committee on the bill (2).

Tueſday, the 19th of March.---The order of the day was read, and the Houſe reſolved itſelf into a Committee, and made ſome further progreſs in the bill; after which, the Speaker reſuming the chair the Friday following was fixed for the Houſe to reſolve itſelf again into a Committee on the bill (3).

Friday, the 22d of March.---A ſimilar proceeding was had, and the matter further poſtponed to the Wedneſday following (4).

Wedneſday, the 27th of March.---The like proceedings took place as on the 7th (5).

On Monday, the 1ſt of April, the next day was appointed for the Houſe to reſolve itſelf again into a Committee, on the bill (6).

Tueſday, the 2d of April.---The like proceedings took place as on Tueſday, the 19th of March; and the 24th of April was appointed for proceeding further on the conſideration of the bill (7).

On that day, the Houſe adjourned till Thurſday, the 18th (8), on account of the Eaſter holidays.

Wedneſday, the 24th of April.---The Committee of the whole Houſe was poſtponed till that day ſevennight (9).

And,

(1) Votes, p. 433.
(2) *Ibid.* p. 439.
(3) *Ibid.* p. 484.
(4) *Ibid.* 513.
(5) *Ibid.* 534.
(6) *Ibid.* 552.
(7) *Ibid.* 566.
(8) *Ibid.*
(9) *Ibid.* 585.

And, on that day ſevennight, (Wedneſday, the 1ſt of May) it was further poſtponed till the Tueſday following (1).

Tueſday, the 7th of May.---The order of the day relative to this matter being read, the Houſe adjourned without reſolving itſelf into a Committee, or appointing any future day for that purpoſe (2).

On Wedneſday, the 8th of May, The Houſe came to the following reſolution:

Reſolved, "That this Houſe will, upon this day *three* "*months*, reſolve itſelf into a Committee of the whole Houſe, "to conſider further of the bill to incapacitate certain per-"ſons, therein mentioned, from voting at elections of "members to ſerve in Parliament, for the borough of "Hindon, in the county of Wilts (3)."

The reader perceives that, by this reſolution, the bill was *virtually* thrown out. It was known that the ſeſſion would be at an end, long before the day thereby appointed for taking it again into conſideration; and all bills depending at the end of a ſeſſion fall, of courſe, to the ground. If the Houſe had intended to take up the affair in the ſucceeding ſeſſion, they would have come to a like reſolution with that of the 8th of May, 1775 (4). But, in truth, there was no ſuch deſign. I have mentioned, on a former occaſion (5), the objections to the plan of changing entirely the right of election in Hindon. It is evident, that ſome of thoſe objections were applicable to the ſcheme of introducing a new ſet of voters in conjunction with the former; though this ſcheme had been adopted by the Parliament, with regard to the borough of New Shoreham (6). It was foreſeen, likewiſe, that there would have been great difficulty in fixing on the new claſs of voters, becauſe the influence of different gentlemen of property in the neighbourhood of the place, would have been more or leſs increaſed, or diminiſhed, according as the freeholders of one, two, or more hundreds, ſhould have been

(1) Votes, p. 640.
(2) *Ibid.* 683.
(3) *Ibid.* 693.
(4) *Supra*, vol. i. p. 99.
(5) *Ibid.* p. 101, 102. Note (B).
(6) 11 Geo. III. cap. 55.

been admitted to a participation of the right of election.--- There was ſome danger, therefore, that a law which, in its origin, was intended to be a public benefit, and to amend the conſtitution, might, in the end, turn out a mere job, and become ſubſervient to the particular intereſt of certain individuals. In ſhort, many, who had, at firſt promoted and ſupported the bill, began in the courſe of the ſeſſion, to alter their opinion with regard to it; or loſt, at leaſt, much of the zeal, which they had formerly ſhown, for its ſucceſs. On the different occaſions, when it was to be taken into conſideration, there was often other buſineſs more urgent, and more generally intereſting, to be diſcuſſed; and, by the time *that* was finiſhed, and the order of the day, for the Houſe to reſolve itſelf into a Committee on the Hindon bill, called for, the greater number of members, already worn out by a long attendance, were glad to leave the Houſe. Advantage was taken of this, by ſome gentlemen, who, from the beginning, made no ſcruple of avowing their reſolution of employing every means, and every ſtratagem, which the forms of procedure in the Houſe of Commons ſhould furniſh, or authorize, in order to defeat the bill. Forty members are neceſſary to conſtitute a Houſe; and, if it appear that there is not that number preſent, an immediate adjournment muſt take place. Whenever thoſe gentlemen imagined that the number preſent was under forty, they moved, that the Houſe ſhould be counted, and, in this manner, the proceedings were, at ſeveral times, ſuddenly ſtopped; *viz.* on Thurſday, the 7th of March (1); on Wedneſday, the 27th of that month (2); and on Tueſday, the 7th of May (3).---Another art was practiſed, with equal or even greater, ſucceſs. Every poſſible objection to the admiſſibility of evidence, was either raiſed by ſome member of the Houſe, or taken by the counſel who attended at the bar on the part of the perſons who had petitioned againſt the bill. Almoſt every ſuch objection produced an argument, a debate, a queſtion, and a diviſion. Thus, the progreſs of the buſineſs was clogged and retarded ſo very effectually, as to make even thoſe who continued the moſt anxious promoters of it, deſpair of ever bringing it to a concluſion;

(1) *Supra*, p. 103. (2) *Ibid.*
(3) *Ibid.* p. 106.

ſion; inſomuch that, at length, by a ſort of tacit agreement of all parties, the whole was dropt, and the reſolution of the 8th of May, 1776, which has been ſtated, having been come to, it was immediately followed by another, in theſe words:

Reſolved, "That Mr. Speaker do iſſue his warrant to "the clerk of the Crown, to make out a new writ, for "the electing of two burgeſſes, to ſerve in this preſent "Parliament, for the borough of Hindon, in the county "of Wilts, the laſt election for burgeſſes to ſerve in this "preſent Parliament, for the ſaid borough, being declared "void (1)."

On Friday, the 3d of May, the following order had been made:

Ordered, "That Mr. Attorney General do give this "Houſe an account of what proceedings have been [had] "in the proſecutions of Richard Smith, Eſquire, Thomas "Brand Hollis, Eſquire, James Calthorpe, Eſquire, and "Richard Beckford, Eſquire, purſuant to the direction of "this Houſe, in the laſt ſeſſion of Parliament (2)."

Agreeably to this order, on Wedneſday, the 22d of May, Mr. Attorney General made a report of the proceedings at law, up to that time (3); which was ordered to lie on the table (4); and a number of copies thereof, ſufficient for the uſe of the members of the Houſe, was ordered to be printed (5).

This was accordingly done.

It has been ſhown, in a former part of this work, that bribery, at elections of members of Parliament, is held to be a crime at common law, independent of any ſtatute againſt it, and to be puniſhable either by indictment, or information (6). The Attorney General adopted the latter mode of proſecution; and ſeparate informations *ex officio* (7) were filed by him in Trinity term, 15 Geo. III. (which was the firſt term after the order of the Houſe of

(1) Votes, 8 May 1776. p. 693.
(2) Votes, p. 656.
(3) *Ibid.* p. 756.
(4) *Ibid.*
(5) Votes, p. 757.
(6) *Supra*, vol. ii. p. 195, 196.
(7) *Vide* Blackſt. Comm. vol. iv. p. 304. 4to Ed.

Commons was made) againſt the four candidates, Smith, Hollis, Calthorpe, and Beckford.—This was in June, 1775.

In Hillary term, 16 Geo. III. the defendants pleaded not guilty; and iſſue being joined, all the four informations were tried at the Lent aſſizes, in the county of Wilts, in March 1776 (1), before Mr. Baron Hotham.

Mr. Calthorpe and Mr. Beckford were acquitted; Mr. Smith and Mr. Hollis were found guilty (2); and, on Monday, the 20th of May, being the laſt day of Eaſter term, 16 Geo. III. they were brought up to the court of King's Bench, to receive the judgment of the court; but, as the Judges were deſirous to have longer time to conſider of the proper puniſhment, they were committed till the next term, to the King's Bench priſon.

Previous, however, to this commitment, *viz.* on the 16th of May, the new election for Hindon took place; and Mr. Smith having again declared himſelf a candidate, he was returned, together with Henry Dawkins, Eſquire.

Such was the ſtate of the proceedings on the proſecutions of the Attorney General, when he made his report to the Houſe, which therefore conſiſted of nothing, but copies of the records of the four informations, and of the pleas, and an account, in a few lines, of the event of the trials (A).

On Saturday the 7th of June, being the ſecond day of Trinity term, 16 Geo. III. Mr. Smith and Mr. Hollis were again brought up for judgment.

On the former occaſion, Mr. Serjeant Davy, as counſel for Mr. Smith had informed the court, that his client had, a few days before, been re-elected, by a great majority of voices, to repreſent the borough of Hindon, and ſince there was not (as he alleged) the leaſt ſhadow or pretence, for any charge of bribery againſt him at that election, he hoped *that* would operate with the court in mitigation of the puniſhment they might think fit to inflict upon him. He ſaid that, at his *firſt* election, inſtead of introducing, for

(1) *Vide* the Report of the Attorney General, preſented to the Houſe of Commons, p. 46. 55.

(2) They called no witneſſes on their trials.

for the firſt time, corruption into the borough, Mr. Smith himſelf had been led aſtray, and induced to the offence of which the verdict of a jury had found him guilty, by the eſtabliſhed, and almoſt univerſal, practice, among the voters of Hindon, of expoſing their ſuffrages to ſale; and that, by the purity with which the *laſt* election had, on his part, been conducted, he was, in ſome meaſure, entitled to the praiſe of having reclaimed his electors from this inveterate abuſe of their franchiſes.

Each of the informations contained ſeveral counts, and both Smith and Hollis were found guilty on *all* the counts, in the informations againſt *them*. Moſt of the counts charged them with acts of bribery committed in October, 1774, immediately before the election. For thoſe acts, they were liable ſtill (until October 1776,) to actions on the ſtatute of 2 Geo. II. cap. 24. and to all the penalties inflicted by that ſtatute (1). The court of King's Bench, in the caſe of the King againſt Heydon, or Haydon, when the defendant was found guilty on an information for bribery granted by the court, reſpited the judgment, till the time within which actions on the ſtatute might be brought, was expired (2), in order that he might not be twice puniſhed for the ſame offence; and, nearly about the ſame time, in the caſe of the King againſt Pitt, and againſt Mead, they, on the ſame principle, eſtabliſhed it as a general rule, not to grant informations for bribery, in future, until the end of the two years allowed by the ſtatute, for proceeding by way of action (3). This rule, however, could only operate upon informations granted, by the diſcretion of the court, to private proſecutors, and could not affect thoſe filed, *ex officio*, by the Attorney General (4). The reaſon of the rule is, indeed, equally applicable to both, and, in caſes of informations, *ex officio*, the court might obtain the ſame end, by reſpiting judgment, as in the caſe of the King againſt Heydon, till the expiration of the two years. But the rule, though *general*, was never meant to be *univerſal*; for, in the caſe of the King againſt Pitt, and againſt

(1) Vide ſupra, vol. i. p. 201.
(2) 3 Burr. 1359.
(3) Ibid. p. 1340.
(4) For the differrence between theſe two ſorts of informations, *vide* Backſt. Comm. vol. iv. p. 304. 4to Edit.

Mead, Lord Mansfield ſaid, "There may poſſibly be par-
"ticular caſes, founded on particular reaſons, where it
"may be right to grant informations, *before* the limited
"time for commencing the proſecution [on the ſtatute of
"2 Geo. II. cap. 24.] is expired (5)."

Mr. Juſtice Aſton now delivered the judgment of the court. After ſtating the qualification with which the general rule had been accompanied in the above-mentioned caſe, he obſerved, That there was a very great difference between the caſes in Burrow, (where the offence was the bribing of a ſingle voter, and the proſecutions carried on by private perſons, who might alſo have ſued on the ſtatute) and the preſent inſtance, which was that of a general corruption, and the proſecutor, the Attorney General, acting under the expreſs order of the Houſe of Commons. He entered largely into the nature, enormity, and dangerous tendency, of the offence; taking notice that, among many evil conſequences, one of its moſt obvious effects was to give riſe to the crime of perjury, becauſe a voter who has ſold his vote, or has been even *promiſed* a reward for it, muſt, if the bribery-oath is tendered to him, be guilty of perjury, before he can be admitted to poll. He traced the hiſtory and gradual progreſs of election-bribery, and of the different remedies which the Houſe of Commons and the legiſlature had provided againſt it; and mentioned, particularly, that a very groſs ſcene of corruption, which had taken place at Beverley, in Yorkſhire, in the year 1727 (1), had given riſe to the ſtatute of 2 Geo. II. cap. 24.

The judgment he delivered nearly in the following words:

"The court has taken into conſideration the impriſon-
"ment you have already undergone, and they adjudge
"that you ſhall pay, each, a fine of 1000 merks; and
"that

(5) 3 Burr. p. 1346.

(1) It is impoſſible to collect any thing of the particular merits of this caſe of Beverley from the entries relative to it in the Journals. *Vide* Journ. vol. xxi. p. 24. col. 1. 1 Feb. 1727-8. p. 188. col. 1, 2. 22 Jan. 1728-9. p. 236. col. 1, 2. 25 Feb. 1728-9. p. 249. col. 2. 9. p. 250. col. 1. 4 March, 1728-9. p. 259. col. 1, 2. 8 March, 1728-9.

" that you be impriſoned ſix months, and until you pay " your reſpective fines.

" As to you, Richard Smith, the court cannot help ex- " preſſing their aſtoniſhment at what appeared from the " mouth of your own counſel, that you continued ſo " boldly to perſiſt in your attempt, and that you have " been again returned for the ſame place. They, there- " fore, have thought proper to add to *your* puniſh- " ment, that, at the expiration of the term of your im- " priſonment, you ſhall give ſecuri y for your good be- " haviour for three years—yourſelf and two ſureties—you " to be bound in 1000 *l.* and each of the ſureties in 500 *l.*"

In conſequence of this judgment, both the defendants were conveyed back to the King's Bench priſon, where they continued till the 23d of November following, *i. e.* for the ſpace of 168 days, or 6 *lunar* months (1)

On that day, their fines having been paid into the hands of Sir James Burrow, the clerk of the Crown, ſome days before, Mr. Hollis was diſcharged by the marſhal. Mr. Smith was brought up to Weſtminſter-hall, and, in the treaſury-chamber of the court of King's Bench, was bound over, agreeably to his ſentence, for three years. This paſſed before Mr. Juſtice Aſton, and Mr. Juſtice Willes, before the other Judges were come down. Yet, I preſume, it is to be conſidered as having been done in court, ſince the recognizance was underſigned "*By the Court.*" (1)

The reader will remark that the ſame incapacities enſue upon a conviction on a proſecution for bribery by way of information at common law, as when the proceeding is by an action under the ſtatute; the diſabling words in the act of 2 Geo. II. cap. 24, being as follow:

" And

(1) " A month in law is a *lunar* month, or twenty-eight " days, unleſs otherwiſe expreſſed, not only becauſe it is always " one uniform period, but becauſe it falls naturally into a quar- " terly diviſion by weeks." Blackſt. Comm. vol. ii. p. 141. 4to ed.—There is another reaſon why, in caſes of puniſhment by impriſonment, the computation ſhould be by lunar months; namely, the favour which is always to be ſhewn to liberty, where the terms are ambiguous and doubtful.

(1) I was favoured by Sir J. Burrow with the account of theſe circumſtances.

" And every perſon offending in any of the caſes afore-
" ſaid, from and after judgment obtained againſt him in
" any ſuch action of debt, bill, plaint, or information,
" or ſummary action, or proſecution, *or being any other-*
" *wiſe lawfully convicted thereof*, ſhall for ever be diſabled
" to vote in any election of any member or members to
" Parliament, and alſo ſhall for ever be diſabled to hold,
" exerciſe, or enjoy any office or franchiſe to which he and
" they then ſhall, or at any time afterwards may be
" entitled, as a member of any city, borough, town-
" corporate, or cinque port, as if ſuch perſon was na-
" turally dead (1)."

There was no petition preſented in the laſt ſeſſion of Parliament, complaining of the re-election of Mr. Smith on the 16th of May; but, as there was not a fortnight between the time when the return was brought in, and the end of the ſeſſion, which happened on the 23d of May, an opportunity ſtill remained for petitioning at the beginning of the preſent ſeſſion, according to the rule mentioned in the Preface to Vol. III (2)."

Accordingly, a petition of Mr. Beckford who had been again a candidate, complaining of the election of Mr. Smith, was preſented on the 1ſt day of November, 1776 (3); and, afterwards, another petition of certain electors in the intereſt of Mr. Beckford was alſo preſented, on Monday, the 11th of the ſame month (4).

Both theſe petitions are to be taken into conſideration on Thurſday, the 23d of January, 1777 (5)

(1) § 7. (2) *Vide ſupra*, vol. iii. pref.
(3) Votes, p. 14, 15.
(4) *Ibid.* p. 48, 49.
(5) *Ibid.* 8 Nov. p. 39. 11 Nov. p. 49.

NOTES

NOTES

ON THE

SUPPLEMENT

TO THE

CASE of HINDON.

PAGE 130. (A.) The Record of the Information againſt Mr. Smith, and of the ſubſequent proceedings, as far as they were laid before the Houſe of Commons, as is as follows:

Of TRINITY TERM, in the Sixteenth Year of the Reign of King GEORGE the Third.

WILTSHIRE,

"BE it remembered, That Edward Thurlow, Eſquire, Attorney general of our preſent Sovereign Lord the King, who for our ſaid Lord the King in this behalf proſecuteth, in his proper perſon cometh here into the court of our ſaid Lord the King, before the King himſelf, at Weſtminſter, on Friday next after the morrow of the Holy Trinity, in this ſame term, and for our ſaid Lord the King, gives the court here to underſtand and be informed, That the borough of Hindon in the county of Wilts is an ancient borough, and for a long ſpace of time two burgeſſes of the ſaid borough have been elected and ſent, and have uſed and been accuſtomed and of right ought to be elected and ſent, to

ſerve

ſerve as burgeſſes for the ſaid borough in the Parliament of this kingdom, (to wit) at the borough of Hindon aforeſaid, in the ſaid county of Wilts: and the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, giveth the court here to underſtand and be informed, That *on the firſt day of October*, in the fourteenth year of the reign of our preſent Sovereign Lord George the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. a certain writ of our ſaid Lord the King, under the great ſeal of Great Britain, iſſued out of his Majeſty's court of Chancery (the ſaid court then and ſtill being at Weſtminſter in the county of Middleſex) directed to the Sheriff of the county of Wilts; by which ſaid writ, our ſaid Lord the King reciting, That whereas by the advice and aſſent of his Majeſty's council, for certain arduous and urgent affairs concerning his ſaid Majeſty, the ſtate and defence of his kingdom of Great Britain and the church, his Majeſty ordered a certain Parliament to be holden at the city of Weſtminſter, on the 29th day of November then next enſuing, and there to treat and have conference with the prelates, great men, and peers of his realm; his Majeſty by his ſaid writ did command and ſtrictly enjoin the ſaid Sheriff, That proclamation being made of the day and place aforeſaid in the ſaid Sheriff's then next county court to be holden after the receipt of that his ſaid Majeſty's writ, two knights of the moſt fit and diſcreet of the ſaid county, girt with ſwords, and of every city of his ſaid county two citizens, and of every borough in the ſame county two burgeſſes, of the moſt ſufficient and diſcreet, freely and indifferently by thoſe who at ſuch proclamation ſhould be preſent, according to the form of the ſtatute in that caſe made and provided, the ſaid then Sheriff ſhould cauſe to be elected, and the names of thoſe knights, citizens, and burgeſſes, ſo to be elected, whether they ſhould be preſent or abſent, the ſaid then Sheriff ſhould cauſe to be inſerted in certain indentures to be thereupon made, between the ſaid then Sheriff and thoſe who ſhould be preſent at ſuch election, and them at the day and place aforeſaid the ſaid then Sheriff ſhould cauſe to come in ſuch manner that the ſaid knights for themſelves and the commonalty of the ſame county, and the ſaid citizens and burgeſſes for themſelves and the commonalty of the ſaid cities and boroughs reſpectively, might have from them full and ſufficient power to do and conſent to thoſe things which then and there by the common council of his ſaid Majeſty's kingdom, by the bleſſing of God ſhould happen to be ordained upon the aforeſaid affairs, ſo that for want of ſuch power or through an improvident election of the ſaid knights, citizens or burgeſſes, the aforeſaid affairs might in no wiſe remain unfiniſhed; willing nevertheleſs, that neither the ſaid then Sheriff nor any other Sheriff of this his Majeſty's

ſaid

ſaid kingdom ſhould be in any wiſe elected; and the election in the ſaid then Sheriff's full county ſo made diſtinctly and openly under the ſaid then ſheriff's ſeal, and the ſeals of thoſe who ſhould be preſent at ſuch election, the ſaid then ſheriff ſhould certify to his Majeſty in his Chancery, at the day and place without delay, remitting to his Majeſty one part of the aforeſaid indentures annexed to the ſaid writ, together with the ſaid writ; and the ſaid Attorney General of our ſaid Lord the King, gives the court here further to underſtand and be informed, that the ſaid writ afterwards, and before the return thereof (to wit) on the ſaid firſt day of October in the 14th year aforeſaid, was delivered to Thomas Eaſtcourt, Eſquire, then and continually from thenceforth until and at and after the return of the ſaid writ being Sheriff of the ſaid county of Wilts, to be executed in due form of law (to wit) at the borough of Hindon aforeſaid: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that by virtue of the ſaid writ, the ſaid Thomas Eaſtcourt, ſo being Sheriff as aforeſaid, afterwards, and before the return of the ſaid writ (that is to ſay) on the ſaid firſt day of October, in the fourteenth year aforeſaid, and in the year of our Lord One thouſand ſeven hundred and ſeventy-four, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, made his precept in writing, ſealed with the ſeal of his office of ſheriff of the ſaid county of Wilts, of and for the election within the ſaid borough, of two burgeſſes of the borough aforeſaid, according to the form and effect of the ſaid writ: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that by virtue of the ſaid precept afterwards, and before the return thereof (to wit) on the 10th day of October, in the 14th year aforeſaid, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, the election of two burgeſſes to ſerve as burgeſſes for the ſaid borough, in the then next Parliament to be holden as aforeſaid, was had and made; which ſaid election was the firſt and next election of burgeſſes to ſerve as burgeſſes for the ſaid borough, in the Parliament of this kingdom, after the commiting of the ſeveral offences herein after firſtly, ſecondly, thirdly, and fourthly mentioned: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that before the iſſuing of the ſaid writ, a general election of repreſentatives to ſerve in parliament for the ſeveral counties, cities, and boroughs in this kingdom, being expected, James Calthorpe, Eſquire, Richard Beckford, Eſquire, Richard Smith, Eſquire, and Thomas Brand Hollis, Eſquire, were candidates, that of them

them two might be choſen and returned to ſerve as burgeſſes for the ſaid borough, in the then next Parliament for this kingdom; and the ſaid James Calthorpe, Richard Beckford, Richard Smith, and Thomas Brand Hollis, remained and continued candidates for the purpoſe aforeſaid, until and at the time of the ſaid election, to wit, at the borough of Hindon aforeſaid, in the ſaid county of Wilts: and the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that the ſaid Richard Smith, late of the ſaid borough of Hindon, in the ſaid county of Wilts, Eſquire, well knowing the premiſſes, but being a perſon of a depraved, corrupt, and wicked mind and diſpoſition, and unlawfully and wickedly intending, as much as in him the ſaid Richard Smith lay, to interrupt and prevent the free and indifferent election of burgeſſes to ſerve for the ſame borough of Hindon, in the then next Parliament of this kingdom, and by illegal and corrupt means to procure himſelf to be elected a burgeſs to ſerve for the ſaid borough in the then next Parliament of this kingdom, before the ſaid election, to wit, on the 15th day of February, in the 13th year of the reign of our Sovereign Lord George the Third, now King of Great Britain, &c. at the borough of Hindon aforeſaid, in the ſaid county of Wilts, unlawfully, wickedly, and corruptly did ſolicit, urge, and endeavour to procure Thomas Moore, Charles Simpſon, John Baldwyn, Jeremiah Lucas, Robert Tyley, Thomas Farrell, Joſ. Norton, Joſs Cuff, John Edwards, William Stephens, John Maiſhment, John Larkham, Renalder Rowles, Joſ. Cholſey the younger, John Davis the elder, Richard Erwood, William Cheverall, Samuel Dorr, Thomas Harden, James Edwards, Joſ. Cholſey the elder, Thomas Spencer, James Smart, John Randall, Edward Ranger, John Dewy, Luke Beckett, Philip Beckett, Henry Dukes, Edward Beckett, Iſacc Moody, William Hacker, John Biſhop, Edward Hollowday, George Spender the younger, John Cheverall, John Dukes the elder, John Dukes the younger, Robert Wyer, Moſes Weeks, George Dukes, George Hayward, Edward Trewlock, Matthew Davis, Philip Beckett the younger, Henry Jerrett, John Davis the younger, William Day, Samuel Collier, Walter Percy, Edward Shergold, Benjamin Beckett, Edward White, John Hooper, the elder, Samuel Farthing, John Hooper the younger, William Newton the elder, William Newton the younger, James Percy, Henry Huffe the elder, Henry Huffe the younger, Benjamin Cholſey the younger, John Bell, George Spender the elder, James Anderſon the younger, William Lambe, Joſ. Lambe, Edward White, Robert Wyer, Mathew White the younger, Mathew Stevens, William White, Richard Ingram, Francis Ranger,

Ranger, William Percy, Elias Pitman, William Cuff the elder, Mathew White the elder, William Stevens, George Stevens, John Stevens the elder, James Stevens, John Stevens the younger, John Wyer, Benjamin Cholſey the elder, William Ranger, Francis Chevetall, Charles Wyer, James Wyer, John White, William Wyer, James Anderſon the elder, John Beckett, Thomas Wyer, Luke Beckett the elder, Roger Spender, Robert Day, William Cuff the younger, Elias Steevens, James Steevens, William Gilham, Henry Savage, Jarvis Gilbert, Thomas Percy, John Ranger, Edward Percy, William Percy the younger, Robert Gilbert, William Dukes, Thomas Dukes, Roger Norton, Joſeph Moody, James Gilbert, John Gane, Luke Mead, Nathaniel Philips, Joſeph Norton, Samuel Norton, John Ranſome, Thomas Brooks, Samuel Philips, Joſeph Scamell, William Sandall the elder, Luke Maiſhment the younger, Luke Maiſhment the elder, John Maiſhment, William Sandall the younger, James Burleigh, William Harden, Samuel Field, John Bowles, Robert Ranger, Thomas Lanham, John Richardſon, William Spender, Henry Obourne, John Penny, Richard Pitman, William Niſheck, James Davies, Joſeph Gilbert, James Gough, James Wier, John Gilbert, and John Steevens, reſpectively, each and every one of them, then and there, and until and at the time of the ſaid election, having a right to vote at and in the election of burgeſſes, to ſerve as burgeſſes for the ſame borough in the Parliament of this kingdom, for him the ſaid Richard Smith, and the more effectually to tempt, corrupt, and procure the ſaid ſeveral perſons who had a right to vote as aforeſaid, to give their reſpective votes for him the ſaid Richard Smith in the ſaid election, he the ſaid Richard Smith, did then and there, to wit, on the ſaid 15th day of February, in the 13th year aforeſaid, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, unlawfully, wickedly, and corruptly give, and cauſe and procure to be given, to the ſaid ſeveral perſons reſpectively, who had ſuch right to vote as aforeſaid, a certain ſum of money, to wit, the ſum of five guineas of lawful money of Great Britain, as a bribe and reward to engage, corrupt, and procure the ſaid ſeveral perſons reſpectively, ſo having ſuch right to vote as aforeſaid, to give their reſpective votes in the ſaid election of burgeſſes to ſerve as burgeſſes for the ſaid borough in the then next Parliament of this kingdom, for him the ſaid Richard Smith, in order that he the ſaid Richard Smith might be elected and returned, to ſerve as a burgeſs for the ſaid borough, in the ſaid then next Parliament of this kingdom, to the great obſtruction and hindrance of a free, indifferent, and unbiaſſed election of burgeſſes to ſerve in Parliament for the ſame borough, in manifeſt violation and ſubverſion of the

the conſtitution of this kingdom, and of the liberties and privileges of the ſubjects thereof, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, giveth the court here further to underſtand and be informed, that the ſaid Richard Smith, being ſuch perſon as aforeſaid, and unlawfully and wickedly intending (as much as in him the ſaid Richard Smith lay) to interrupt and prevent a free and indifferent election of burgeſſes to ſerve for the ſaid borough of Hindon in the then next Parliament of this kingdom, and by illegal and corrupt means to procure himſelf to be elected to ſerve as burgeſs for the ſaid borough in the then next Parliament of this kingdom, before the ſaid election, (to wit) *on the third day of October*, in the 11th year aforeſaid, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, unlawfully, wickedly, and corruptly, in the preſence and hearing of divers perſons, who had then and there a right to vote in the election of burgeſſes to ſerve for the ſaid borough in the Parliament of this kingdom, did declare, and with a loud voice publiſh, that he would give to each and every perſon who had a right to vote in the ſaid election of burgeſſes to ſerve for the ſaid borough of Hindon in the then next Parliament of this kingdom, bribes and rewards to vote in that election for him the ſaid Richard Smith, with intent unlawfully to tempt, corrupt, and procure the perſons having a right to vote in that election, to give their votes in that election for him the ſaid Richard Smith, that he the ſaid Richard Smith might be elected and returned a burgeſs to ſerve for the ſaid borough in the ſaid then next Parliament of this kingdom, to the great obſtruction of a free, quiet, and indifferent election of burgeſſes to ſerve in Parliament as burgeſſes for the ſame borough, in manifeſt violation and ſubverſion of the conſtitution of this kingdom, and of the liberties and privileges of the ſubjects thereof, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that the ſaid Richard Smith, being ſuch perſon as aforeſaid, and again unlawfully, wickedly, and corruptly intending (as much as in him the ſaid Richard Smith lay) to interrupt and prevent the free and indifferent election of burgeſſes to ſerve as burgeſſes for the ſaid borough in the Parliament of this kingdom, and by illegal and corrupt means to procure himſelf to be elected a burgeſs to ſerve as a burgeſs for the ſaid borough in the Parliament of this kingdom, he the ſaid Richard Smith,

afterwards,

afterwards, and before the ſaid election ſo had and made as aforeſaid, to wit, on the 4th day of April, in the 14th year of the reign of our Lord the now King, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, unlawfully, wickedly, and corruptly did give, and cauſe and procure to be given, to divers other perſons, namely, Thomas Moore, Charles Simpſon, John Baldwin, Jeremiah Lucas, Robert Tyler, Thomas Farrell, Joſeph Norton, Joſeph Cuff, John Edwards, William Stevens, John Maiſhment, John Larkham, Renalder Bowles, Joſeph Cholſey the younger, John Davis the elder, Richard Erwood, William Chiverall, Samuel Daw, Thomas Harden, James Edwards, Joſeph Cholſey the younger, Thomas Spencer, James Smart, John Randle, Edward Ranger, John Dewey, Luke Becket, Philip Becket, Henry Dukes, Edward Becket, Iſaac Moody, William Hacker, John Biſhop, Edward Hollowday, George Spencer the younger, John Cheverall, John Dukes the elder, John Dukes the younger, Robert Wyer, Moſes Weeks, George Dukes, George Hayward, Edward Trewlock, Mathew Davis, Philip Becket the younger, Henry Jerret, John Davis the younger, William Day, Samuel Collier, Walter Percy, Edward Shergold, Benjamin Becket, Edward White, John Hooper the elder, Samuel Farthing, John Hooper the younger, William Hooper the elder, William Newton the younger, James Percy, Henry Huff the elder, Henry Huff the younger, Benjamin Cholſey the younger, John Bell, George Spender the elder, James Anderſon the younger, William Lambe, Joſeph Lambe, Edward White, Robert Wyer, Mathew White the younger, Mathew Steevens, William White, Richard Ingram, Francis Ranger, William Percy, Elias Pitman, William Cuff the elder, Mathew White the elder, William Steevens, George Steevens, John Steevens the elder, James Steevens, John Steevens the younger, John Wyer, Benjamin Cholſey the elder, William Ranger, Francis Chiverall, Charles Wyer, James Wyer, John White, William Wyer, James Anderſon the elder, John Beckett, Thomas Wyer, Luke Beckett the elder, Roger Spender, Robert Day, William Cuff the younger, Elias Steevens, William Gilham, Henry Savage, Charles Gilbert, Thomas Percy, John Ranger, Edward Percy, William Percy the younger, Robert Gilbert, William Dukes, Thomas Dukes, Roger Norton, Joſ. Moody, James Gilbert, John Gane, Luke Mead, Nathaniel Philips, Joſeph Norton, Samuel Norton, John Randſome, Thomas Brookes, Samuel Philips, Joſeph Scamell, William Sandall the elder, Luke Maiſhment the younger, Luke Maiſhment the elder, John Maiſhment, William Sendle, James Burleigh, William Harden, Samuel Field, John Bowles, Robert Ranger, Thomas Lanham, John Richardſon, William

William Spender, Henry Obourne, John Penny, Richard Pittman, William Niſbeck, James Davis, Joſeph Gilbert, James Gough, James Wire, John Gilbert, and John Stevens, reſpectively, each and every of them then and there, and until and at the time of the ſaid election having a right to vote at and in the election of burgeſſes to ſerve as burgeſſes for the ſaid borough of Hindon in the Parliament of this kingdom, another large ſum of money (to wit) the ſum of five guineas of like lawful money, as a bribe and reward to each of them the ſaid ſeveral perſons laſt-mentioned having ſuch right as aforeſaid, to engage, corrupt, and procure the ſaid perſons reſpectively to give their reſpective votes at and in the then next election of burgeſſes to ſerve as burgeſſes for the ſame borough in the ſaid then next Parliament of this kingdom, for him the ſaid Richard Smith, in order that he the ſaid Richard Smith might be elected a burgeſs to ſerve for the ſaid borough in the ſaid then next Parliament of this kingdom, to the great obſtruction and hindrance of a free, quiet, indifferent, and unbiaſſed election of burgeſſes to ſerve in Parliament as burgeſſes for the ſame borough, in violation and ſubverſion of the conſtitution of this kingdom, and of the liberties and privileges of the ſubjects thereof, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that the ſaid Richard Smith, being ſuch perſon as aforeſaid, and again unlawfully, wickedly, and corruptly intending (as much as in him the ſaid Richard Smith lay,) to interrupt and prevent the free and indifferent election of burgeſſes to ſerve as burgeſſes for the ſame borough in the Parliament of this kingdom, and by illegal and corrupt means to procure himſelf to be elected a burgeſs to ſerve as a burgeſs for the ſaid borough in Parliament; he the ſaid Richard Smith, before the ſaid election, (to wit) *on the eighth day of October*, in the fourteenth year aforeſaid, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, did unlawfully, wickedly, and corruptly give, and cauſe and procure to be given, to divers other perſons, namely, Joſeph Norton, Joſ. Cuffe, John Edwards, labourer, William Stevens, John Marſham, John Edwards, glazier, John Larkham, Renalder Bowles, Joſeph Cholſey the younger, John Davis the elder, Richard Erwood, William Chiverall, Samuel Daw, Thomas Harden, James Edwards, Joſeph Cholſey the elder, Thomas Spencer, Henry Oborne, John Penny, James Smart, John Randle, Edward Ranger, Stephen Harding, John Dewey, William Snook, Harry Jukes, Edward Beckett, Richard Pitman, Thomas Wier, Iſaac Moody, William

am Hacker, John Biſhop, Edward Halliday, Walter Beckett, George Spender the younger, John Chiverall, John Dukes the elder, John Dukes the younger, Robert Wier, Moſes Weeks, George Dukes, Thomas Steevens, William Spender, John Hart, George Hayward, Edward Tulick, Mathew Davis, John Ingram the younger, Philip Beckett the younger, Andrew Farrett, Henry Jerrard, William Brookes, John Gilbert, John Steevens, Elias Steevens, John Davis, Thomas Howell, William Day, Walter Piercy, John Beckett, Edward Shergold, Benjamin Beckett, Edward White, John Hooper the elder, Samuel Farthing, William Newton, William Neſbic, John Hooper the younger, William Lucas, William Newton the younger, James Piercy, William Abraham, Henry Huffe the elder, Henry Huffe the younger, John Moore, Benjamin Cholſey the younger, John Bell, George Spender, James Anderſon, William Lambe, Joſeph Lambe, Edward White, Robert Wyer, Mathew White the younger, Mathew Stevens, William White, Richard Ingram, Francis Ranger, Elias Pittman, William Cuffe, Matthew White, William Steevens, George Steevens, John Steevens the elder, James Steevens, John Steevens the younger, John Wyer, Benjamin Cholſey the elder, William Ranger, Thomas Steevens, Francis Chiverell, Charles Wier, John White, William Wier, James Anderſon, John Beckett, Thomas Wier, Luke Beckett, Roger Spender, Robert Day, John Nairn, William Cuff, Elias Steevens, James Steevens, Iſaac Savage, William Gilham, Archibald Hunter, Henry Savage, James Lambert, John Steevens, James Cuffe, Jervoiſe Gilbert, Thomas Piercy, John Ranger, Edward Piercy, Robert Gilbert, Thomas Lanham, Joſ. Gilbert, John Richardſon, William Dukes, Richard Smith, Henry Lambert, James Warne, Thomas Dukes, Roger Norton, Joſeph Moody, James Davis, James Gilbert, Thomas Philips, John Gane, Luke Mead, Nathaniel Philips, Joſeph Norton, Samuel Norton, John Ranſome, Thomas Brookes, Thomas Harden, John Harden, Samuel Phillips, Joſ. Scammell, William Sandle the elder, Luke Marſham the younger, James Goffe, Luke Marſham the elder, John Marſham, Richard Harden, William Sanddle the younger, James Burleigh, William Harden, Thomas Field, Samuel Field, Richard Beckett, and Robert Ranger, reſpectively, each and every of them then and there reſpectively having a right to vote in the election of burgeſſes to ſerve for the ſame borough in the Parliament of this kingdom, a large ſum of money, to wit, the ſum of five guineas of like lawful money, as a bribe and reward to engage, corrupt, and procure the ſaid ſeveral laſt-mentioned perſons reſpectively to give their reſpective votes in the election of burgeſſes, to ſerve as burgeſſes for the ſame borough

borough in the ſaid then next Parliament of this kingdom, for him the ſaid Richard Smith, in order that he the ſaid Richard Smith might be elected and returned a burgeſs to ſerve for the ſaid borough in the ſaid then next Parliament of this kingdom; by means whereof the ſaid ſeveral perſons laſt above-named, who had ſuch right to vote as aforeſaid, were reſpectively tempted, corrupted, and procured to give, and did give their votes at and in the ſaid election ſo had and made as aforeſaid, for the ſaid Richard Smith, for the purpoſe aforeſaid; that is to ſay, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, to the great obſtruction and hindrance of a free, quiet, indifferent, and unbiaſſed election of burgeſſes to ſerve in Parliament for the ſame borough, in violation and ſubverſion of the conſtitution of this kingdom, and of the liberties and privileges of the ſubjects thereof, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that the ſaid Richard Smith, well knowing the premiſes, but being ſuch perſon as aforeſaid, and again unlawfully, wickedly, and corruptly intending, as much as in him the ſaid Richard Smith lay, to interrupt and prevent the free and indifferent election of burgeſſes to ſerve as burgeſſes for the ſame borough in the Parliament of this kingdom, and by illegal and corrupt means to procure himſelf to be elected to ſerve as a burgeſs for the ſaid borough in the Parliament of this kingdom, the ſaid Richard Smith, before the ſaid election, (to wit) *on the ſaid 8th day of October*, in the 14th year aforeſaid, at Hindon aforeſaid, in the ſaid county of Wilts, unlawfully, wickedly, and corruptly did give, and cauſe and procure to be given, to divers other perſons, namely, Thomas Moore, Charles Simpſon, John Baldwin, Jeremiah Lucas, Robert Tyley, Thomas Farrell, Joſeph Norton, Joſeph Kirk, John Edwards, William Stephens, John Maiſhment, John Larkham, Renalder Bowles, Joſeph Cholſey the younger, John Davis the elder, Richard Erwood, William Cheverall, Samuel Daw, Thomas Harden, James Edwards, Joſeph Cholſey the elder, Thomas Spencer, James Smart, John Randall, Edward Ranger, John Dewey, Luke Beckett, Philip Beckett, Henry Dukes, Edward Beckett, Iſaac Moody, William Hacker, John Biſhop, Edward Hollowday, George Spender the younger, John Chiverall, John Dukes the Elder, John Dukes the younger, Robert Wyer, Moſes Weeks, George Dukes, George Hayward, Edward Trewlock, Matthew Davis, Philip Beckett the younger, Henry Jerrett, John Davis the younger, William Day, Samuel Collier, Walter Piercy, Edward Shergold, Benjamin Beckett,

Edward

Edward White, John Hooper the elder, Samuel Farthing, John Hooper the younger, William Newton the elder, William Newton the younger, James Piercy, Henry Huffe the elder, Henry Huffe the younger, Benjamin Cholſey the younger, John Bell, George Spender the elder, James Anderſon the younger, William Lambe, Joſ. Lambe, Edward White, Robert Wyer, Matthew Whyte the younger, Matthew Steevens, William White, Richard Ingram, Francis Ranger, William Percy, Elias Pitman, William Cuff the elder, Matthew White the elder, William Steevens, George Steevens, John Steevens the elder, James Steevens, John Steevens the younger, John Wyer, Benjamin Cholſey the elder, William Ranger, Francis Chiverall, Charles Wyer, James Wyer, John White, William Wyer, James Anderſon the elder, John Beckett, Thomas Wyer, Luke Beckett the elder, Roger Spender, Robert Day, William Cuff the younger, Elias Steevens, James Steevens, William Gilham, Henry Savage, Jarvis Gilbert, Thomas Percy, John Ranger, Edward Percy, William Percy the younger, Robert Gilbert, William Dukes, Thomas Dukes, Roger Norton, Joſeph Moody, James Gilbert, John Gane, Luke Mead, Nathaniel Philips, Joſeph Norton, Samuel Norton, John Ranſome, Thomas Brookes, Samuel Phillips, Joſeph Scamel, William Sandall the elder, Luke Maiſhment the younger, Luke Maiſhment the elder, John Maiſhment, William Sendle, James Burleigh, William Harden, Samuel Field, John Bowles, Robert Ranger, Thomas Lanham, John Richardſon, William Spender, Henry Obourne, John Penny, Richard Pittman, William Neſbick, James Davis, Joſeph Gilbert, James Gough, James Wire, John Gilbert, and John Steevens, reſpectively, each and every of them, then and there, and until and at the time of the ſaid election ſo had and made as aforeſaid, claiming a right to vote in the election of burgeſſes to ſerve for the ſaid borough in the Parliament of this kingdom, a large ſum of money, to wit, the ſum of five guineas, of like lawful money, as a bribe and reward to engage, corrupt, and procure the ſaid ſeveral perſons ſo claiming a right to vote as aforeſaid reſpectively, to give their reſpective votes at the ſaid election of burgeſſes to ſerve in Parliament for the ſame borough, for him the ſaid Richard Smith, in order that he the ſaid Richard Smith might be elected and returned a burgeſs to ſerve for the ſaid borough in the ſaid then next Parliament of this kingdom, to the great obſtruction and hindrance of a free, quiet, and indifferent election of burgeſſes to ſerve in Parliament for the ſame borough, in violation and ſubverſion of the conſtitution of this kingdom, and of the liberties and privileges of the ſubjects thereof, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the

King, his crown and dignity: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that the ſaid borough of Hindon, in the ſaid county of Wilts, is an ancient borough, and for a long ſpace of time two burgeſſes have been elected and ſent, and of right ought to be elected and ſent, to ſerve for the ſaid borough in the Parliament of this kingdom, to wit, at the borough of Hindon aforeſaid, in the ſaid county of Wilts: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, gives the court here further to underſtand and be informed, that the ſaid Richard Smith, being a perſon of a depraved, corrupt, and wicked mind and diſpoſition, and unlawfully and wickedly intending, as much as in him the ſaid Richard Smith lay, to prevent and interrupt the free and indifferent election of burgeſſes to ſerve for the ſame borough in the Parliament of this kingdom, and by illegal and corrupt means to procure himſelf to be elected to ſerve as a burgeſs for the ſaid borough in the Parliament of this kingdom, *on the eight day of October*, in the 14th year aforeſaid, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, unlawfully, wickedly, and corruptly did give, and cauſe and procure to be given, to divers perſons, namely, Jeremiah Lucas, Thomas Moore, Charles Simpſon, John Baldwin, Jeremiah Lucas, Robert Tyley, Thomas Farrell, Joſ. Norton, Joſ. Cuff, John Edwards, William Steevens, John Maiſhment, John Larkham, Renalder Bowles, Joſeph Cholſey the younger, John Davis the elder, Richard Erwood, William Chiverall, Samuel Daw, Thomas Harden, James Edwards, Joſ. Cholſey the elder, Thomas Spencer, James Smart, John Randle, Edward Ranger, John Dewey, Luke Beckett, Philip Beckett, Henry Dukes, Edward Beckett, Iſaac Moody, William Hacker, John Biſhop, Edward Hollowday, George Spender the younger, John Chiverall, John Dukes the elder, John Dukes the younger, Robert Wyer, Moſes Weeks, George Dukes, George Hayward, Edward Trewlock, Matthew Davis, Philip Beckett the younger, Henry Jerrett, John Davies the younger, William Day, Samuel Collier, Walter Percy, Edward Shergold, Benjamin Beckett, Edward White, John Hooper the elder, Samuel Farthing, John Hooper the younger, William Newton the elder, William Newton junior, James Percy, Henry Huff the elder, Henry Huff the younger, Benjamin Cholſey the younger, John Bell, George Spender the elder, James Anderſon the younger, William Lambe, Joſeph Lambe, Edward White, Robert Wyer, Mathew White the younger, Mathew Steevens, William White, Richard Ingram, Francis Ranger, William Percy, Elias Pittman, William Cuff the elder, Mathew White the elder, William

liam Steevens, George Steevens, John Steevens the elder, James Steevens, John Steevens the younger, John Wyer, Benjamin Cholſey the elder, William Ranger, Francis Cheverall, Charles Wyer, James Wyer, John White, William Wyer, James Anderſon the elder, John Beckett, Thomas Wyer, Luke Beckett the elder, Roger Spender, Robert Day, William Cuff the younger, Elias Steevens, James Steevens, William Gilham, Henry Savage, Jarvais Gilbert, Thomas Percy, John Ranger, Edward Peny, William Percy the younger, Robert Gilbert, William Dukes, Thomas Dukes, Roger Norton, Joſ. Moody, James Gilbert, John Gane, Luke Mead, Nathaniel Philips, Joſ. Norton, Samuel Norton, John Ranſome, Thomas Brooks, Samuel Philips, Joſ. Scamell, William Sandall the elder, John Maiſhment the younger, Luke Maiſhment the elder, John Maiſhment, William Sendell, James Burleigh, William Harden, Samuel Field, John Bowles, Robert Ranger, Thomas Lanham, John Richardſon, William Spender, Henry Obourne, John Penny, Richard Pittman, William Niſbeck, James Davis, Joſ. Gilbert, James Gough, James Wire, John Gilbert, John Steevens, reſpectively, each and every of them then and there having a right to vote at and in the election of burgeſſes to ſerve for the ſame borough in the Parliament of this kingdom, another large ſum of money (to wit), the ſum of five guineas of like lawful money, as a bribe and reward to engage, corrupt, and procure the ſaid ſeveral laſt-mentioned perſons reſpectively to give their reſpective votes at and in the then next election of burgeſſes to ſerve in Parliament for the ſame borough, for him the ſaid Richard Smith, in order that the ſaid Richard Smith, might be elected and returned a burgeſs to ſerve for the ſaid borough, at the then next election of burgeſſes to ſerve in the Parliament of this kingdom, to the great obſtruction of a free, indifferent, and unbiaſſed election of burgeſſes to ſerve in Parliament for the ſame borough, in violation and ſubverſion of the conſtitution of this kingdom, and of the liberties and privileges of the ſubjects thereof, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity: And the ſaid Attorney General of our ſaid Lord the King, for our ſaid Lord the King, giveth the court here further to underſtand and be informed, that the ſaid Richard Smith, being ſuch perſon as aforeſaid, and again unlawfully and wickedly intending, as far as in him lay, to interrupt and prevent the free and indifferent election of burgeſſes to ſerve for the ſaid borough of Hindon in the Parliament of this kingdom, and by illegal and corrupt means to procure himſelf to be elected and returned to ſerve as a burgeſs for the ſaid borough in the Parliament of this kingdom, he the ſaid

Richard Smith, *on the 10th day of October*, in the 14th year aforeſaid, at the borough of Hindon aforeſaid, in the ſaid county of Wilts, unlawfully, wickedly, and corruptly did lend, and cauſe and procure to be lent, to divers other perſons, namely, Thomas Moore, Charles Simpſon, John Baldwin, Jeremiah Lucas, Robert Tyley, Thomas Farrell, Joſ. Norton, Joſeph Kirk, John Edwards, William Stephens, John Maiſhment, John Larkham, Renalder Bowles, Joſ. Cholſey the younger, John Davies the elder, Richard Erwood, William Cheverall, Samuel Daw, Thomas Harden, James Edwards Joſ. Cholſey the elder, Thomas Spencer, James Smart, John Randall, Edward Ranger, John Dewey, Luke Beckett, Philip Beckett, Henry Dukes, Edward Beckett, Iſaac Moody, William Hacker, John Biſhop, Edward Hollowday, George Spender the younger, John Cheverall, John Dukes the elder, John Dukes the younger, Robert Wyer, Moſes Weeks, George Dukes, George Hayward, Edward Trewlock, Mathew Davis, Philip Beckett the younger, Henry Jerrett, John Davis the younger, William Day, Samuel Collier, Walter Percy, Edward Shergold, Benjamin Beckett Edward White, John Hooper the elder, Samuel Farthing, John Hooper the younger, William Newton the elder, William Newton the younger, James Percy, Henry Huff the elder, Henry Huff the younger, Benjamin Cholſey the younger, John Bell, George Spender the elder, James Anderſon the younger, William Lambe, Joſ. Lambe, Edward White, Robert Wyer, Mathew White the younger, Mathew Steevens, William White, Richard Ingram, Francis Ranger, William Percy, Elias Pittman, William Cuffe the elder, Matthew White the elder, William Steevens, George Steevens, John Steevens the elder, James Steevens, John Steevens the younger, John Wyer, Benjamin Cholſey the elder, William Ranger, Francis Cheverall, Charles Wyer, James Wyer, John Whyte, William Wyer, James Anderſon the elder, John Beckett, Thomas Wyer, Luke Beckett the elder, Roger Spender, Robert Day, William Cuff the younger, Elias Steevens, James Steevens, William Gilham, Henry Savage, Jarvis Gilbert, Thomas Percy, John Ranger, Edward Percy, William Percy the younger, Robert Gilbert, William Dukes, Thomas Dukes, Roger Norton, Joſeph Moody, James Gilbert, John Gane, Luke Mead, Nathaniel Philips, Joſeph Norton, Samuel Norton, John Ranſome, Thomas Brookes, Samuel Philips, Joſeph Seamell, Willliam Sandall the elder, Luke Maiſhment the younger, Luke Maiſhment the elder, John Maiſhment, William Sendle, James Burleigh, William Harden, Samuel Field, John Bowles, Robert Ranger, Thomas Lanham, John Richardſon, William Spender, Henry Obourne, John Penny, Richard Pittman, William Neſbick, James Davis, Joſeph Gilbert, James Gough, James Wire, John

John Gilbert, and John Steevens, reſpectively, each and every of them then and there having a right to vote at and in the election of burgeſſes to ſerve in Parliament for the ſame borough, a large ſum of money, to wit, five guineas of lawful money of Great Britain, as a bribe and reward to engage, corrupt, and procure the ſaid ſeveral perſons laſt above-named, having a right to vote as aforeſaid, reſpectively to give their reſpective votes in the then next election of burgeſſes to ſerve for the ſaid borough in the Parliament of this kingdom, for the ſaid Richard Smith, in order that he the ſaid Richard Smith might be elected and returned a burgeſs to ſerve for the ſaid borough in the then next Parliament of this kingdom, to the great obſtruction and hindrance of a free, indifferent, and unbiaſſed election of burgeſſes to ſerve in Parliament for the ſame borough, in violation and ſubverſion of the conſtitution of this kingdom, and of the liberties and privileges of the ſubjects thereof, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his crown and dignity: Whereupon the ſaid Attorney General of our ſaid Lord the King, who for our ſaid Lord the King in this behalf proſecuteth, for our ſaid Lord the King prayeth the conſideration of the court here in the premiſes, and that due proceſs of law may be awarded againſt him the ſaid Richard Smith in this behalf, to make him anſwer to our ſaid Lord the King touching and concerning the premiſſes aforeſaid: Wherefore the ſheriff of the ſaid county of Wilts was commanded that he ſhould not forbear by reaſon of any liberty in his bailiwick, but that he ſhould cauſe him to come to anſwer to our ſaid Lord the King touching and concerning the premiſſes aforeſaid. And now (that is to ſay) on Tueſday next after the octave of Saint Hilary, in the ſame term, before our ſaid Lord the King at Weſtminſter cometh the ſaid Richard Smith, by William Sidgwick his attorney, and having heard the ſaid information read, he ſaith that he is "*Not Guilty*" thereof, and hereupon he putteth himſelf upon the country; and the aforeſaid Edward Thurlow, Eſquire, who proſecuteth for our ſaid Lord the King in this behalf, doth the like: Therefore let a jury thereupon come before our ſaid Lord the King, on the octave of the purification of the bleſſed Virgin Mary, whereſoever he ſhall then be in England, by whom the truth of the matter may be the better known, and who are not of the kindred of the ſaid Richard Smith, to try upon their oath whether the ſaid Richard Smith be guilty of the premiſſes aforeſaid or not: Becauſe as well the ſaid Edward Thurlow, Eſquire, who proſecuteth for our ſaid Lord the King in this behalf, as the ſaid Richard Smith, having thereupon put themſelves upon the

ſaid

ſaid jury, the ſame day is given as well to the ſaid Edward Thurlow, Eſquire, who proſecuteth for our ſaid Lord the King in this behalf, as to the ſaid Richard Smith; at which ſaid time, (to wit) on the octave of the purification of the bleſſed Virgin Mary aforeſaid, before our ſaid Lord the King at Weſtminſter come as well the ſaid Edward Thurlow, Eſquire, who proſecuteth for our ſaid Lord the King in this behalf, as the ſaid Richard Smith by his Attorney aforeſaid: And the ſheriff of the ſaid county of Wilts returned the names of twelve jurors, none of whom come to try in form aforeſaid, therefore the ſheriff of the ſaid county of Wilts is commanded that he do not forbear by reaſon of any liberty in his Bailiwick, but that he diſtrain the jurors laſt aforeſaid by all their lands and chattles in his bailiwick, ſo that neither they, nor any one for them, do put their hands to the ſame, until he ſhall have another command from our ſaid Lord the King for that purpoſe, and that he anſwer to our ſaid Lord the King for the iſſues thereof, ſo that he may have their bodies before our ſaid Lord the King, in fifteen days from the feaſt day of Eaſter, whereſoever he ſhall then be in England, or before the Juſtices of our ſaid Lord the King aſſigned to hold the aſſizes in and for the ſaid county of Wilts, if they ſhall come before that time (that is to ſay) on Saturday the ninth day of March next, at New Sarum, in the ſaid county, according to the form of the ſtatute in that caſe made and provided, to try upon their oath whether the ſaid Richard Smith be guilty of the premiſſes aforeſaid or not, in default of the jurors aforeſaid who came not to try in form aforeſaid; therefore let the ſheriff of the ſaid county have the bodies of the ſame jurors accordingly to try in form aforeſaid: The ſame day is given, as well to the ſaid Edward Thurlow, Eſquire, who proſecuteth for our ſaid Lord the King in this behalf, as to the ſaid Richard Smith, at which time, to wit, in fifteen days from the feaſt day of Eaſter aforeſaid, before our ſaid Lord the King at Weſtminſter come as well the ſaid Edward Thurlow, Eſquire, who proſecuteth for our ſaid Lord the King in this behalf, as the ſaid Richard Smith by his Attorney aforeſaid: And the aforeſaid Juſtices of Aſſize, before whom the ſaid jury came to try in form aforeſaid, ſent here their record had before them in theſe words; (that is to ſay) afterwards, on the day and at the place laſt within mentioned, before Sir James Eyre, Knight, and Sir Beaumont Hotham, Knight, two of the Barons of his Majeſty's court of Exchequer, Juſtices of our ſaid Lord the King aſſigned to hold the Aſſizes in and for the county of Wilts within mentioned, according to the form of the ſtatute in ſuch caſe made and provided, come as well the within-named Edward Thurlow, Eſquire, who proſecuteth for our ſaid Lord the King in this behalf, as the within named Richard Smith by his Attorney

ney within mentioned; and the jurors of the jury, whereof there is mention within made, being called, ſome of them (to wit) William Bennet, of Norton Bavant, Eſquire, Richard Southby, of Bulford, Eſquire, William Hayter, of Newton Toney, Eſquire, Thomas Moore of Durrington, Eſquire, Francis Dugdale Aſtley, of Everley, Eſquire, and John Whitelock, of Eaſtridge, Eſquire, come and are ſworn upon the ſaid jury; and becauſe the reſt of the ſaid jury do not appear, therefore others of the byſtanders, being choſen for this purpoſe by the ſheriff of the ſaid county at the requeſt of the ſaid Edward Thurlow, Eſquire, by the command of the ſaid Juſtices are anew appointed, whoſe names are affiled in the pannel within written, according to the form of the ſtatute in ſuch caſe made and provided; and the jurors ſo anew appointed as aforeſaid, to wit, James Hancock, of Smallbrook, Edward Bracher, of Stockton, John Ferris, of Warminſter, John Ford, of Potterne, John Jerrard, of Funthill Gifford, and William Lawrence, of Alderbury, being called, likewiſe come and are ſworn upon the ſaid jury; and thereupon public proclamation being made for our ſaid Lord the King, as the cuſtom is, that if any one will inform the Juſtices aforeſaid, the King's Serjeant at Law, the King's Attorney General, or the jurors of the jury aforeſaid, concerning the matters within contained, he ſhould come forth, and ſhould be heard: And hereupon Naſh Groſe, Serjeant at Law, offereth himſelf on the behalf of our ſaid Lord the King to do this; Whereupon the court here proceedeth to take the ſaid inqueſt by the jurors aforeſaid, now here appearing for the purpoſe aforeſaid; who being elected, tried, and ſworn to ſpeak the truth concerning the matters within contained, ſay upon their oath that the ſaid Richard Smith *is guilty* of the premiſſes, in the information within ſpecified and charged upon him, in manner and form as in and by the ſaid information is within alleged againſt him."

The other three informations, were, in point of form, entirely the ſame with this.

SUP-

SUPPLEMENT

TO THE

CASE OF SHAFTESBURY.

VOL. II. CASE XIX.

ON Thurſday, the 4th of May, 1775, the Houſe had reſolved, That it would be highly expedient to take the minutes, of the examination taken before the Committee who tried this cauſe, into conſideration, as early as poſſible in the next ſeſſion of Parliament (1).

On Thurſday, the 2d of November, 1775, which was the 8th day of the enſuing ſeſſion, all the reſolutions of the Houſe, of the 4th of May, relative to this cauſe, ſuch as they have been ſtated in the hiſtory of the caſe (2), were read (3); and then the Houſe came to a reſolution, That they would, on Thurſday, the 1ſt day of February, 1776, take the minutes of the examination taken before the Committee into conſideration (4).

At the ſame time, orders were made, ſeverally, That thirteen perſons, therein named, ſhould attend the Houſe, on the 1ſt of February (5).

And the following order was made:

Ordered, "That Mr. Speaker do not iſſue his warrant, for the making out a new writ, for the electing of a "burgeſs,

(1) *Supra*, vol. ii. p. 152.
(2) *ibid.*
(3) Votes, p. 42. 43.
(4) *Ibid.* p. 43.
(5) *Ibid.*

" burgeſs, to ſerve in Parliament, for the borough of " Shafton, otherwiſe Shafteſbury, before the 1ſt day of February next (1)."

Thurſday, the 25th of January, 1776.—The order for taking the minutes of the Committee into conſideration on the 1ſt of February, was diſcharged, and a new order made, for taking them into conſideration on Wedneſday the 14th of that month (2).

At the ſame time, a joint order was made, for the attendance, on the 14th, of the perſons who had been ſeverally ordered to attend the Houſe on the 2d (3).—This joint order was renewed, afterwards, whenever the further conſideration of this buſineſs was adjourned to a ſubſequent day.

On Wedneſday, the 14th of February, the order of the day for that purpoſe being read, the Houſe entered on the conſideration of the minutes of the Committee; and, as the proceedings of that day gave occaſion to much ſubſequent debate, and there has been a great diverſity of opinion with regard to the propriety of them, it will be proper to ſet forth the account of them at large, as it is entered in the Votes.

" The Houſe proceeded to take into conſideration, the " minutes of the examination taken before the ſelect Com- " mittee, who were appointed in the laſt ſeſſion of Parlia- " ment, to try and determine the merits of the petition of " Hans Wintrop Mortimer, Eſquire, complaining of an " undue election and return, for the borough of Shafton, " otherwiſe Shafteſbury, in the county of Dorſet.

" The Houſe was moved, That the proceedings of the " Houſe, of the 25th day of April, and the 4th day of " May, in the laſt ſeſſion of Parliament, upon the report " which was made from the ſaid ſelect Committee, might " be read.

" And the ſame were read accordingly.

" And ſeveral parts of the ſaid minutes were alſo read,

" Reſolved, *nemine contradicente*,

" That it appears to this Houſe, by the minutes of the " ſelect Committee, appointed to try the merits of the " election of members to ſerve in Parliament, for the " borough

(1) *Ibid.* (2) Votes, p. 208. (3) *Ibid.*

" borough of Shafteſbury, and which have been laid before " this Houſe, that there was the moſt notorious ſubornati- " on of perjury practiſed, and the moſt corrupt and wil- " ful perjury committed, at the laſt election for members " to ſerve in Parliament, for the borough of Shafteſbury, " in the county of Dorſet.

" A motion was made, and the queſtion being *propoſed*, " That it appears to this Houſe, from the ſaid minutes, " that Francis Sykes, Eſq; was a principal promoter, and " ſuborner of the ſaid corrupt and wilful perjury;

" A motion was made, and the queſtion being *put*, " That the further conſideration of the ſaid minutes be ad- " journed till this day fortnight, the 28th day of this in- " ſtant February;

" It paſſed in the negative.

" Reſolved, That it appears to this Houſe, from the ſaid " minutes, that Francis Sykes, Eſq; was a principal pro- " moter and ſuborner of the ſaid corrupt and wilful per- " jury.

" Reſolved, That it appears to this Houſe, from the ſaid " minutes, that Thomas Rumbold, Eſquire, was a princi- " pal promoter and ſuborner of the ſaid corrupt and wilful " perjury.

" Reſolved, That it appears to this Houſe, from the " ſaid minutes, that John Good was a principal promoter, " and ſuborner of the ſaid corrupt and wilful perjury.

" Reſolved, That it appears to this Houſe, from the ſaid " minutes, that William Bennet was a principal promoter, " and ſuborner of the ſaid corrupt and wilful perjury.

" Reſolved, That it appears to this Houſe, from the " ſaid minutes, That William Armſtrong was a principal " promoter, and ſuborner of the ſaid corrupt and wilful " perjury.

" Reſolved, That it appears to this Houſe, from the " ſaid minutes, that Matthew Merefield was a principal " promoter, and ſuborner of the ſaid corrupt and wilful " perjury.

" Reſolved, That it appears to this Houſe, from the " ſaid minutes, that William Pope was a principal pro- " moter, and ſuborner of the ſaid corrupt and wilful " perjury.

" Reſolved,

"Reſolved, That it appears to this Houſe, from the "ſaid minutes, that Thomas Hannam was a principal "promoter, and ſuborner of the ſaid corrupt and wilful "perjury.

"Ordered, That the Attorney General do forthwith "proſecute the ſaid Francis Sykes, Thomas Rumbold, "John Good, William Bennet, William Armſtrong, Mat-"thew Mereſield, William Pope, and Thomas Hannam, "for the ſaid offence.

"Ordered, That leave be given to bring in a bill, to "diſfranchiſe, and incapacitate certain perſons, therein to "be mentioned, from voting at elections of members to "ſerve in Parliament, and for preventing bribery and cor-"ruption in the election of members to ſerve in Parlia-"ment for the borough of Shafteſbury, in the county of "Dorſet; and that Sir George Yonge, Mr. Hungerford, "Mr. William Drake, *junior*, Mr Daſhwood, Mr. An-"neſley, Sir George Robinſon, Mr. George Venables "Vernon, Mr. Abel Smith, Mr. Aſheton Curzon, Mr. "Sutton, Mr. Holt, Sir John Duntze, Sir Richard Wor-"ſeley, Lord Guernſey, Mr. George Clive, Mr. Dunning, "and Mr. Serjeant Adair, do prepare, and bring in, the "ſame (1)."

The foregoing reſolutions, that the two candidates who had been returned, and the other perſons therein mention-ed, had been guilty of ſubornation of perjury, and the or-ders for proſecuting them for that offence, were warmly oppoſed on ſeveral grounds.

In the firſt place, it was contended, That it was impro-per, and unjuſt, for the Houſe to declare the parties guilty, when there had been no evidence given, nor witneſſes ex-amined, in the Houſe, to ſupport the charge, and no op-portunity given to the accuſed, to produce witneſſes to prove their innocence.

The anſwer to this objection was, That the Houſe might, with the ſame propriety, give credit to the account of the evidence which had been produced to the Committee, as contained in the minutes, as the courts of Weſtminſter-hall do to the report of a judge, of the evidence given on the trial of a cauſe before him; and that it had been the uni-form practice for the Houſe, merely on the evidence given in

(1) Votes, p. 327, 328.

in Committees, and reported to them, to proceed to cenſures, and even puniſhment. That the Journals are full of inſtances, of returning officers, and other perſons, committed by the Houſe, on reports from the Committee of elections, of evidence of the miſconduct of ſuch perſons given before them, without any new evidence being produced to the Houſe. That, even ſince the eſtabliſhment of the new judicature, there had been examples of perſons puniſhed for prevarication and miſbehaviour before a Committee, on the mere report of the Chairman of ſuch Committee; and that, on ſuch occaſions, it had never been imagined that the Houſe ought firſt to have called for evidence at their own bar, to prove the prevarication, and miſbehaviour (1). That much more reliance was to be had on the teſtimony given before a Committee, by witneſſes, ſworn to ſpeak the truth, and liable, in caſe of perjury, to the penalties of the law (2), than to what perſons, not upon oath, might ſay at the bar of the Houſe.

In the next place it was contended, That the evidence, on which the charge of ſubornation of perjury was founded, as contained in the minutes of the Committee, was not ſufficient to ſupport the charge, or juſtify the propoſed reſolutions.

That part of the minutes, on which the reſolutions againſt Sykes and Rumbold were founded, is in the evidence given by one Henry Waite (a tin-plate worker, and ſervant to John Good), on the firſt of April; and is as follows:

" The night before the poll I had converſation with " Sykes and Rumbold at my maſter's ſhop.—Sundry peo- " ple came there to regale themſelves on that behalf; a " little bit of feaſt made by my maſter.

" Sykes and Rumbold, my maſter and Mereſield, came " in; and Mereſield ſaid, he hoped he ſhould ſee them " *in as good ſpirits* next day.—Sundry doubted about the " oath.—— *Sykes and Rumbold ſaid, they might take the oath* " *very ſafely.*——*Both ſaid ſo.*—When Sykes and Rumbold " came out with my maſter to go round the ſtreet again, " Rumbold and Good (the maſter) went out firſt—Sykes, " laſt

(1) *Vide ſupra*, vol. i. p. 44, 45. Vol. iii. p. 79, 80.
(2) 10 Geo. III. cap. 16. § 29.

" laſt coming out, ſays to me, *You may depend on it, it is* " *not my money*—I ſaid, very well——I wiſh you a good " night.

" It was imagined in the borough, that the oath would " be given next morning——The ground of doubt was, " *as they had taken ſome money*" (1).

(Here evidence about other matters intervenes.)

Being croſs-examined, to what paſſed at his maſter's ſhop, on the night before the poll, he ſaid,

" ——— Sykes and Rumbold ſaid, *they might take the* " *oath*—— I don't know they eat, or drank—— I cannot be " punctual who ſaid it firſt to the people then ſitting—— " *They were half drunk, or thereabouts* ——— I was a ſer- " vant to attend them all night——— I was ſober——— " *Sykes and Rumbold ſaid, the oath was nothing at all to them* " ———There was no converſation between Sykes and " me——— When he ſaid the money was not his——— " theſe were the laſt words he ſaid when he was coming " out of the houſe (2)."

(Here again evidence about other matters intervenes.)

" Several people were in the room when Sykes and Rum- " bold ſaid, *they might ſafely take the oath* (3)."

There were none of the other perſons, ſaid by Waite to have been preſent at this ſcene, called before the Committee, to corroborate what he ſwore concerning the converſation of Sykes and Rumbold.

This evidence, it was ſaid, was of ſuch a nature as ſcarcely to deſerve any credit, both becauſe it was unſupported by any concurrent teſtimony, although, according to the witneſs's own account, there were ſundry perſons preſent, and becauſe the witneſs owned that the ſuppoſed converſation paſſed in a riotous and drunken meeting, where it was not likely that he could have heard with much accuracy, or would pay a very nice attention to the expreſſions uſed by the two candidates.

A third objection to the orders for proſecuting the parties for *ſubornation* of perjury was this: That there had not been a trial and *conviction* of the perſons ſaid to have been perjured in conſequence of the ſuppoſed ſubornation.

It

(1) *Vide* printed minutes, p. 27.
(2) Printed minutes, p. 28. (3) *Ibid.*

It was contended, That a ſuborner of perjury muſt be conſidered as an acceſſary before the fact, and that it is a general rule of law, that no perſon charged as an acceſſary ſhall be put on his trial, until the conviction of the principal. That this rule cannot be departed from, unleſs in ſome inſtances where particular exceptions from it have been introduced by act of Parliament; namely, by 1 Ann. cap. 9. § 1. in caſes of felony, when, from particular circumſtances enumerated in the ſtatute, it is impoſſible that there ſhould be a ſubſequent trial of the principal; and by § 2. of the ſame ſtatute, in caſes of receivers of ſtolen goods, knowing them to be ſtolen. That the reaſons of the rule are, that, in the firſt place, unleſs the principal has committed the fact, there can be no acceſſary; as, for example, unleſs perjury has been committed, there can have been no *ſubornation*, and the only proper evidence that the fact has been committed, is the record of the conviction; and that, in the ſecond place, if the acceſſary could be firſt tried, it might ſo happen, that he ſhould be convicted one day, and the principal be acquitted the next, which would be abſurd (1) (A).

Theſe, and other arguments, however weighty they appeared to many, did not prevail with the majority of the Houſe on the 14th of February, when they came to the reſolutions and orders which have been ſtated.

Informations were, in conſequence of theſe orders of the Houſe, prepared by the Attorney General, againſt all the perſons ſpecified in the orders; and were actually filed againſt Mr. Sykes and Mr. Rumbold.

The puniſhment for perjury, and ſubornation of perjury, is, at common law, the ſame: namely, fine, impriſonment, and the incapacity of being a witneſs ever afterwards (2). By the ſtatute of 5 Eliz. cap. 9. the perſons proſecuted thereon, for ſubornation of perjury, are puniſhed with the perpetual incapacity of being a witneſs, and a fine of 40*l.*; and, in defect of *goods or chattels, lands or tenements*, to the value of 40*l.* they are to be impriſoned for

(1) Hawk. Pleas of the Cr. Book ii. cap. 29. §. 43, 44, 45. Black. Com. vol. i. p. 318, 319. 4to ed.

(2) Co. 3 Inſt. 163.

for half a year, and to stand in the pillory for an hour (1). Perjury, by the same statute, is punished with six months imprisonment, a fine of 20 *l.*, and the perpetual incapacity of being a witness; and, in defect of *goods or chattels* to the value of 20 *l.* then the offender to stand with both ears nailed to the pillory (2). In both cases, one half of the fine is to go to the King, and the other to the party injured by the perjury (3).

By the statute of 2 Geo. II. cap. 25. it is enacted,

"That, besides the punishment already to be inflicted "*by law* for the crimes of wilful and corrupt perjury, and "subornation of perjury, it shall and may be lawful for "the court or judge, before whom any person shall be con- "victed of wilful and corrupt perjury, or subornation of "perjury, *according to the laws now in being*, to order such "person to be sent to some house of correction within the "same county, for a time not exceeding seven years, "there to be kept to hard labour during all the said time, "or otherwise to be transported to some of his Majesty's "plantations beyond the seas, for a term not exceeding "seven years, as the court shall think most proper; and "thereupon judgment shall be given, that the person con- "victed shall be committed or transported accordingly, over "and beside such punishment as shall be adjudged to be "inflicted on such person, *agreeable to the laws now in being*; "and, if transportation be directed, the same shall be ex- "ecuted in such manner as is or shall be provided by law "for the transportation of felons; and if any person so "committed or transported shall voluntarily escape or "break prison, or return from transportation before the "expiration of the time for which he shall be ordered to "be transported, as aforesaid, such person, being thereof "lawfully convicted, shall suffer death as a felon, with- "out benefit of clergy, and shall be tried for such felony "in the county where he so escaped, or where he shall be "apprehended (4)."

The new penalties introduced by this act are made to attach, on conviction, whether the prosecution be at common law, or on the statute of 5 Eliz. When the prosecution

(1) 5 Eliz. cap. 9. § 3, 4. (2) § 7. (3) § 8.
(4) 2 Geo. II. cap. 25. §. 2.

tion is upon the ſtatute of Elizabeth, great technical nicety is required in the proceedings (1) (B). Hence, it is uſually carried on at common law (2).

"Subornation of perjury (ſays Hawkins, in his Pleas "of the Crown,) ſeems to be an offence in procuring a "man to take a falſe oath amounting to perjury, *who ac-* "*tually takes ſuch oath*; but it ſeemeth clear that, if the "perſon incited to take ſuch an oath, *do not actually take* "*it*, the perſon by whom he was ſo incited is *not* guilty of "ſubornation of perjury; yet it is certain that he is liable "to be puniſhed, not only by fine, but by infamous cor-"poral puniſhment (3)."

With regard to this laſt offence, of inciting a perſon to commit perjury who, however, does not commit it, it is evident, that no previous conviction, is, or can be, neceſſary, as a ground for proſecuting the offender. As, therefore, there were ſuch reaſons for doubting whether proſecutions for ſubornation were competent, without an antecedent trial and conviction of the perſon ſuborned, it was thought proper, by the gentlemen concerned in adviſing and drawing the informations in queſtion, to add, to the counts for ſubornation, others charging the defendants with this other offence of inciting the voters to perjury.

Wedneſday, the 21ſt of February.—Sir George Yonge preſented a bill of incapacitation, agreeable to the order of the 14th (4), which was ordered to be read a ſecond time on the 4th of March, and, in the mean time, it was ordered to be printed, and copies thereof, and of the order for the ſecond reading, ordered to be ſerved on the parties named in it; leaving ſuch copies at the laſt place of their abode to be deemed good ſervice (5).

Wedneſday, the 28th of February,—"A petition of "Thomas Rumbold, Eſq; was preſented to the Houſe, "ſetting forth, That the petitioner obſerves, by the votes, "that divers reſolutions have been come to, upon taking "into conſideration the minutes of the examination taken "before

(1) Hawk. Pleas of the Crown, B. i. c. 69. § 17.
(2) Black. Com. vol. iv. p. 137. 4to ed.
(3) Hawk. Pl. of the Cr. B. i. cap. 69. §. 10.
(4) *Supra*, p. 120. (5) Votes, p. 356.

" before the ſelect Committee, who were appointed, in " the laſt ſeſſion of Parliament, to try and determine the " merits of the petition of Hans Wintrop Mortimer, Eſq; " complaining of an undue election and return for the " borough of Shafteſbury, and, in particular, a reſoluti- " on, " That it appeared to this Houſe, from the ſaid mi- " nutes, that the petitioner was a principal promoter and " ſuborner of wilful and corrupt perjury at the ſaid elec- " tion," and that the petitioner *had not any information* " *given him*, that any proceedings were intended to be " had with reſpect to him; and, as the petitioner is con- " ſcious of his innocence, he truſts he ſhould have been " able, had he been apprized of ſuch proceedings, to have " ſatisfied the Houſe, that there was no foundation for ſo " heinous a charge; and that the petitioner's character and " reputation is highly affected by the ſaid reſolution; and " therefore praying that the Houſe will grant him ſuch " relief in the premiſes, as to them ſhall ſeem meet (1)."

Then, upon a motion for that purpoſe, ſo much of the entries in the votes of the Houſe of the proceedings of the 14th of February, as related to Mr. Rumbold, was read; after which a motion was made,

" That the order to the Attorney General for proſecut- " ing Thomas Rumbold, Eſquire, for the ſaid offence, be " diſcharged (2)."

This motion was ſupported, and enforced, by all thoſe arguments, and objections to the order, which have been already ſtated (3). Great ſtreſs was particularly laid on the circumſtance alleged in Mr. Rumbold's petition, that the motion for the reſolution againſt him was made without his having received any notice to prepare himſelf to oppoſe it.

On the other hand, many, even of thoſe who did not concur in the reſolutions and orders for proſecution, nor indeed approve of them, were, however, ſtrenuous in oppoſing the preſent motion; becauſe it was almoſt (C) an unprecedented thing for the Houſe, to annul proceedings of their own, in the ſame ſeſſion in which thoſe proceed-

(1) Votes, p. 389, 390.
(2) Votes, p. 390.
(3) *Supra*, p. 155, to 158.

ings took place, and becauſe they thought ſuch an example would be very dangerous, as it would afford a pretext for ſimilar applications and attempts, on almoſt every occaſion, when any perſon ſhould think himſelf aggrieved by what might have been reſolved or ordered by the Houſe; the conſequence of which would be to delay and interrupt the whole courſe of parliamentary buſineſs.

The queſtion being put, it paſſed in the negative (1); (On a diviſion of 169, to 142.)

"A motion was then made, and the queſtion put, "That the petition of Thomas Rumbold, Eſquire, be re-"ferred to the conſideration of a Committee, to inquire "into facts, and report the ſame, with their opinion "thereupon, to the Houſe."

This likewiſe paſſed in the negative (2);—(On a diviſion of 143, to 136).

The petition was ordered to lie on the table (3).

After this, a petition of Mr Sykes, in the very ſame terms with that of Mr. Rumbold, being preſented; a motion was made, and the queſtion put, that it ſhould be referred to a Committee, to inquire into and report the facts, and their opinion upon them.

This paſſed in the negative (4),—(without a diviſion).

Friday, the 1ſt of March.——A petition of one Charles Pinhorn, of the borough of Shafteſbury, was preſented to the Houſe, ſetting forth, That he was declared, by the bill of incapacitation then depending, to be diſabled from voting at any election of members to ſerve in Parliament; and alleging, that, in the report made by the Committee to the Houſe, he was not charged with bribery, or attempting to bribe any perſons whatſoever;—Praying, therefore, that he might be heard, by his counſel, againſt that part of the bill which reſpected him.

This petition was ordered to lie on the table, until the ſecond reading of the bill (5).

The ſame day was preſented another petition of certain perſons, on behalf of themſelves and others; obſerving, that they were diſabled by the bill from ever voting for members of Parliament; alleging, that they conceived themſelves

(1) Votes, p. 390. (2) *Ibid.* (3) *Ibid.* (4) *Ibid.*
(5) Votes, p. 403.

themſelves to be thereby greatly aggrieved; and praying that they might be heard, by their counſel, againſt the bill, and that it might not paſs into a law (1).

It was ordered that this petition ſhould lie on the table till the ſecond reading of the bill; and that, then, the petitioners, if they ſhould think fit, might be heard, by their counſel, againſt it (2).

Monday, the 4th of March.—The order of the day for the ſecond reading of the bill was diſcharged, and the day following appointed for that purpoſe (3).

Tueſday, the 5th of March.—The order of the day being read, and the Houſe being informed that no counſel attended, the bill was read a ſecond time, and that day ſe'nnight appointed for the whole Houſe to go into a Committee upon it. All the perſons mentioned in the orders of the 2d of November (4), (except one Foot and one Wilton,) were ordered to attend the Committee of the whole Houſe; and ſeparate orders were alſo made for the attendance of 16 other perſons therein named, at the ſame time (5). Theſe perſons were afterwards included in the joint orders mentioned in the account of the proceedings on the 25th of January (6).

The two petitions, preſented on the 1ſt of March, were ordered to be referred to the Committee of the whole Houſe, and leave given to the petitioners to be then heard againſt the bill, by themſelves or their counſel (7).

Thurſday, the 7th of March.——Several orders were made for 15 more perſons, therein named, to attend the Committee of the whole Houſe, on the Tueſday following (8). They likewiſe were afterwards included in the joint orders mentioned in the account of the proceedings on the 25th of January (9).

Tueſday, the 12th of March.———The order of the day being read, the Committee of the whole Houſe was poſtponed till the Monday following (10).

(1) Votes, p. 404.
(2) *Ibid.* p. 408.
(3) Votes, p. 413.
(4) *Supra*, p. 153.
(5) Votes, p. 421.
(6) *Supra*, p. 153.
(7) Votes, p. 421.
(8) Votes, p. 432.
(9) *Supra*, p. 153.
(10) Votes, p. 451.

Monday, the 18th of March.———The order of the day for that purpoſe being read, the Houſe reſolved itſelf into a Committee on the bill, Mr. Vernon being chairman; and, after ſome time ſpent therein, the Speaker reſumed the chair, and Mr. Vernon reported, That they had examined ſeveral witneſſes, and had made ſome progreſs. The Thurſday following was then appointed for proceeding again in the Committee of the whole Houſe (1).

Thurſday, the 21ſt of March.—The like proceedings took place as on the 18th; and the Tueſday following was then appointed for the Committee of the whole Houſe (2).

Tueſday, the 26th of March.—The Houſe having reſolved itſelf into a Committee on the bill, after ſome time ſpent therein, the Speaker reſumed the chair, and the Houſe adjourned, without appointing any future day for continuing the proceedings (3).

On the enſuing day, (Wedneſday, the 27th of March,) the Friday following was appointed for the Committee to ſit again (4).

Friday, the 29th of March.—The like proceedings took place as on the 26th (5).

Monday, the 1ſt of April.—The 22d of April was fixed for the Houſe to reſolve itſelf again into a Committee on the bill (6).

Thurſday, the 18th of April.—The order fixing the 22d was diſcharged, and the 29th of April fixed for the Committee of the whole Houſe to ſit again (7).

Monday, the 29th of April.—The like proceedings were had as on the 18th of March (8), and the Friday following fixed for the Committee to ſit again (9).

Friday, the 3d of May.—The order of the day being read, and the Houſe having gone into the Committee, after ſome time, the Speaker reſumed the chair, and the following reſolution was come to:

Reſolved,

(1) Votes, p. 479.
(2) Votes, p. 502, 503.
(3) Votes, p. 928. *Vide ſupra*, Supplement to the Caſe of Hindon, p. 126.
(4) Votes, p. 533. (5) Votes, p. 543. (6) Votes, p. 552.
(7) Votes, p. 577. (8) *Vide Supra.*
(9) Votes, p. 621.

Reſolved, "That this Houſe will *immediately* reſolve it-
"ſelf into a Committee of the whole Houſe to conſider of
"the ſaid bill."

The Houſe, however, adjourned immediately,—there not being 40 members preſent (1).

Monday, the 5th of May.—"A motion was made, and
"the queſtion being put, that this Houſe will, *upon this*
"*day three months*, reſolve itſelf into a Committee of the
"whole Houſe, to conſider further of a bill to disfranchiſe
"and incapacitate certain perſons, therein mentioned,
"from voting at elections of members to ſerve in Parlia-
"ment, and for preventing bribery and corruption, in the
"election of members to ſerve in Parliament, for the bo-
"rough of Shafton, otherwiſe Shafteſbury, in the county
"of Dorſet:

"It paſſed in the negative."

And that day ſe'nnight was appointed for the Committee to ſit again (2)

On Wedneſday, however, the 8th of May, immediately after the proceedings of that day relative to the borough of Hindon (3), the Houſe being moved, that the order of Monday the 5th, appointing that day ſe'nnight for the Houſe to reſolve itſelf again into a Committee on the incapacitation bill for Shafteſbury, might be read, and it being read;

It was ordered to be *diſcharged* (4).

It is evident, from the foregoing account of the proceedings on this bill, that it was oppoſed in the ſame manner with the Hindon bill. It was thought to be liable to the ſame objections, and it had the ſame fate. As ſoon as the order for proceeding further upon it was diſcharged, a reſolution was come to, as in the caſe of Hindon, that the Speaker ſhould iſſue his warrant for a new writ, to ſupply the vacancy for Shafteſbury (5).

On Friday, the 22d of November, in the third ſeſſion of the preſent Parliament, a petition of Mr. Rumbold being offered to be preſented to the Houſe, "A motion was
"made,

(1) *Supra*. Suppl. to the Caſe of Hindon, p. 128.
(2) Votes, p. 664.
(3) *Supra*, p. 12. (4) Votes, p. 693.
(5) *Ibid.*

" made, and the queſtion being propoſed, that the ſaid " petition be brought up, and a debate ariſing in the " Houſe thereupon; a motion was made, and the queſtion " being put, that the debate be adjourned till Monday, the " 3d day of February next;

" It paſſed in the negative (1)."

Then the petition was brought up and read. It contained the ſame allegations with his petition, preſented on the 28th of February, in the foregoing ſeſſion (2), and ſet forth, beſides, " That the petitioner did make an *application* " (3) for relief, in the laſt ſeſſion, which was rejected, " and that the reſolution concerning which he offered his " ſaid petition having been paſſed in the ſaid ſeſſion, he " apprehended, that *that* circumſtance might have been " a motive to the Houſe, not to grant the prayer of his " ſaid petition. That he hoped, therefore, that, this " cauſe no longer exiſting, his requeſt might now be more " favourably received "

The entry in the Journal of the Houſe, of the 14th of February in the foregoing ſeſſion of Parliament, of the proceedings of the Houſe, on taking the minutes of the Committee on the Shafteſbury election into conſideration, ſo far as they related to Mr. Rumbold, and the order for proſecuting him, being then read, the Houſe having been moved for that purpoſe, the following order was made:

" Ordered, That the ſaid order to the Attorney General, " for proſecuting the ſaid Thomas Rumbold, Eſquire, be " diſcharged (4)."

Afterwards, a petition of Mr. Sykes, preciſely in the ſame terms with that of Mr. Rumbold, was preſented, and then the entry of the proceedings of the 14th of February, in the foregoing ſeſſion, ſo far as they related to him, together with the order for proſecuting him, being read, on a motion for that purpoſe;

The order for proſecuting him was diſcharged (5).

Laſtly, the entry of the proceedings of the ſame day, relative to Good, Bennet, Armſtrong, Mereſield, Pope, and

(1) Votes, 22 Nov. 1776. p. 981.
(2) *Supra*, p. 160.
(3) This word ſhould be "*petition*."
(4) Votes, p. 99.
(5) Votes, p. 99, 100.

and Hannam, together with the order for proſecuting them, being read, on a motion for that purpoſe;

The order for proſecuting them was alſo diſcharged (1).

It is obſervable, that there were not, in this caſe, (as there had been in that of Hindon) any orders of the Houſe, directing proſecutions for bribery.

While the proceedings in the Houſe of Commons were depending, Mr. Mortimer, the petitioner who had been determined to be duly elected, brought an action againſt Mr. Sykes, on the ſtatute of 2 Geo. II. cap. 24. for twenty-ſix acts of bribery, charged to have been committed previous to the election, and within the time limited by the ſtatute (2), for ſuing for the penalties. The cauſe was tried at the aſſizes at Dorcheſter, on the 27th of July, 1776, before Mr. Baron Eyre, and the plaintiff had a verdict for twenty-two penalties, amounting to eleven thouſand pounds.

(1) Votes, p. 100.
(2) 2 Geo. II. cap. 24. § 7.

NOTES

NOTES

ON THE

SUPPLEMENT

TO THE

CASE OF SHAFTESBURY.

PAGE 158. (A) " It ſeems to have been always agreed, " that the plea of the acceſſory cannot be tried before the ap- " pearance or attainder of the principal, unleſs he deſires it " himſelf; in which caſe, it is agreed, that he may be tried " without the principal, according to the rule that, *Quilibet po-* " *teſt renunciare juri pro ſe introducto.*" Hawk. *loc. cit.*

P. 160. (B) It is worthy of obſervation, that, although ſuch nicety is thought neceſſary in the formal proceedings in proſecutions on this ſtatute, there is great inaccuracy in the language of the ſtatute itſelf. One of the moſt obvious rules, in penning acts of Parliament, ſeems to be, that, in different caſes, when the meaning of the legiſlature is the *ſame*, the *ſame* form of words, or mode of expreſſion, ſhould be uſed. Yet it is aſtoniſhing how little care is taken to adhere to this rule (*Vide ſupra*, vol. iii. p. 110.) In this ſtatute of Queen Elizabeth, it is enacted, by § 4, That, if it happen any ſuch offender, &c. (i. e. any *ſuborner* of perjury,) being convicted, &c. not to have any *goods or chattels, lands or tenements*, to the value of 40 pounds, that then, &c. And, by § 7. That if it happen the ſaid offender, (i. e. any perſon having *committed* perjury) not to have any *goods and chattels* to the value of 20 pounds; that then, &c. The meaning of the legiſlature, as to the inability of paying the fine, muſt have been the ſame in both inſtances; (and ſo it is ſtated by Sir W. Blackſtone, vol. iv. p. 137. 4to Ed.) yet, in a conviction for perjury, the having *lands* to the value, does not, by the *words* of the act, exempt the convict from the alternative preſcribed in caſe of ſuch inability.

bility. If a perſon convicted of ſubornation cannot pay the fine, he is, by § 4, "*to ſtand upon the pillory for the ſpace of one* "*whole hour.*" If a perſon convicted of perjury is unable to pay the fine, he is by § 7. to be *ſet on the pillory, and there to have both his ears nailed.* Here again, notwithſtanding the difference of expreſſion, we can hardly ſuppoſe, that the manner of ſtanding in the pillory was intended to be different in the two caſes; and Sir W. Blackſtone, in the paſſage juſt cited, ſtates the law to be, as well with regard to ſubornation, as to perjury, that the offender is *to ſtand with both ears nailed to the pillory.*

P. 161. (C) A very few years ago, a caſe happened, in which an order of the Houſe of Commons was expunged from the Votes by a ſubſequent order, in the ſame ſeſſion, at the diſtance of leſs than a month from the time when the firſt order was made. The occaſion was this: Dr. Thomas Nowell, principal of St. Mary Hall, King's profeſſor of modern hiſtory, and public orator in the univerſity of Oxford; had preached the annual ſermon, on the 30th of January, 1772 (the anniverſary of the death of Charles the Firſt), at St. Margaret's, Weſtminſter, before the Houſe of Commons. On the 31ſt, the following order was made:

Ordered, "That the thanks of this Houſe be given to the "Reverend Doctor Nowell, for the ſermon preached by him "yeſterday, before this Houſe, at St. Margaret's, Weſtmin-"ſter; and that he be deſired to print the ſame; and that Sir "William Dolben, and Mr. Alexander Popham do acquaint "him therewith."

It is well known how ill thoſe ſermons are generally attended, and how much it has been looked upon as a matter of courſe that the thanks of the Houſe ſhould be given to the preacher. When the ſermon in queſtion, however, came to be printed, it was thought by many people to contain ſentiments repugnant to the freedom of the conſtitution and the principles of the revolution; in ſome paſſages, the author ſeemed to juſtify all the arbitrary meaſures of the Crown in the beginning of the reign of Charles the Firſt, and to condemn, indiſcriminately, all the ſteps taken to reſiſt them; and his ſermon concluded with what was conſidered as an indiſcreet compariſon between that Prince and his preſent Maſeſty. It was feared that, if the vote of thanks for this ſermon ſhould continue on the records of the Houſe, it might, to ſome, carry with it an appearance, as if the Houſe had given their ſanction and approbation to the exceptionable ſentiments and paſſages contained in it. To prevent any conſequence of this ſort, a motion was made, on Tueſday, the 25th of February, that the entry in the Votes, of the order which has been ſtated, ſhould be read; which being

ing done, the Houſe was moved, That the ſaid entry ſhould be expunged from the Votes.

Before the queſtion was put on this, another motion was made, "That the orders of the day be now read," (by which an attempt was made to put off the queſtion for expunging the vote of thanks) and a third motion being made, "That the Journal "of the Houſe, of the 12th day of May, 1660, of the proceedings of the Houſe, in relation to an exception which "was taken to ſome words ſpoken by Mr. Lenthall, then a "member of the Houſe, might be read," the ſame was read accordingly, and then the queſtion being put on the motion for reading the orders of the day, the Houſe divided, and it paſſed in the negative, by a majority of 152, to 41.

Then the main queſtion was put, and the following reſolution come to:

Reſolved, "That the ſaid entry be expunged from the Votes of this Houſe." (Journ. vol. xxxiii. p. 509. col. 2.

In conſequence of this reſolution, the order of the 31ſt of January is not inſerted in the Journal of that day in the ordinary form, but, there is a memorandum reciting it, and mentioning the reſolution for expunging it. (Journ. ſame vol. p. 435. col 2. 436. col. 1.)

The entry referred to, of the 12th of May, 1660, is as follows:

"Some exception was taken to ſome words ſpoken by "Mr. Lenthall, a member of this Houſe, in the debate of the "bill of general pardon, to the effect following, *viz.* "He "that firſt drew his ſword againſt the King, committed as high "an offence, as he that cut off the King's head."

"Mr. Lenthall, ſtanding up in his place, explained himſelf; "and withdrew.

"The queſtion being propounded, That Mr. Lenthall be "called to the bar; and there receive the reprehenſion of "this Houſe;

"And the queſtion being put, That this queſtion be now "put;

"It paſſed with the affirmative.

"And the main queſtion being put; it was

"Reſolved, That Mr. Lenthall be called to the bar, and "there receive the reprehenſion of the Houſe.

"The ſerjeant, with his mace, went to Mr. Lenthall, who "was withdrawn into the Speaker's chamber, and brought "him to the bar of this Houſe; who there kneeling, Mr. "Speaker bid him riſe; and after, according to the order of "the Houſe, gave him a ſharp reprehenſion to the effect following:

"Mr.

" Mr. Lenthall, The Houſe hath taken very great offence " at ſome words you have let fall, upon debate of this buſineſs, " of the bill of indemnity; which, in the judgment of this " Houſe, hath as high a reflection on the juſtice and proceed- " ings of the Lords and Commons of the laſt Parliament, in " their actings before 1648, as could be expreſſed. They " apprehended, there is much of poiſon in the words; and " that they were ſpoken out of deſign to ſet this Houſe on fire; " they tending to render them that drew the ſword to bring " delinquents to condign puniſhment, and to vindicate their " juſt liberties, into balance with them that cut off the King's " head; of which act they expreſs their abhorrence and deteſ- " tation; appealing to God, and their conſcience bearing " them witneſs, that they had no thoughts againſt his perſon, " much leſs againſt his life. Therefore, I am commanded to " let you know, that, had theſe words fallen out at any other " time, but in this Parliament; or, at any time in this Parlia- " ment, but when they had conſiderations of mercy, pardon, " and indemnity, you might have expected a ſharper and ſe- " verer ſentence than I am now to pronounce: But the diſpo- " ſition of his Majeſty is to mercy; he hath invited his people " to accept it; and it is the diſpoſition of the body of this " Houſe, to be healers of breaches, and to hold forth mercy " to men of all conditions, ſo far as may ſtand with juſtice, " and the juſtification of themſelves before God and man: I " am therefore commanded to let you know, that *that* being " their diſpoſition, and the preſent ſubject of this day's debate " being mercy, you ſhall therefore taſte of mercy; yet I am " to give a ſharp reprehenſion; and I do, as ſharply and ſe- " verely as I can, (for ſo I am commanded) reprehend you " for it."

APPEN-

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APPENDIX.

THE third ſection of the Introduction contains the *ſubſtance* of the ſtatutes, which eſtabliſhed the new judicature, digeſted in a regular method: But queſtions have often ariſen in Committees, and others may, in future, ariſe, on the conſtruction of the *words* of thoſe ſtatutes. It has, on that account, been thought proper, by way of Appendix, to inſert the ſtatutes themſelves in this place, where they will be more acceſſible, and more eaſily conſulted, than in the voluminous editions of the Statutes at Large.

Statute 10 George III. Cap. 16.

An Act to regulate the Trials of controverted Elections, or Returns, of Members to ſerve in Parliament.

1. WHEREAS the preſent mode of deciſion upon petitions, complaining of undue elections or returns of members to ſerve in Parliament, frequently obſtructs public buſineſs; occaſions much expence, trouble, and delay to the parties; is defective, for want of thoſe ſanctions and ſolemnities which are eſtabliſhed by law in other trials; and is attended with many other inconveniences: For remedy thereof, be it enacted by the King's moſt excellent Majeſty, by and with the conſent of the Lords ſpiritual and temporal, and Commons, in this preſent Parliament aſſembled, and by the authority of the ſame, that after the end of the preſent ſeſſion of Parliament, whenever a petition, complaining of an undue election or return of a member or members to ſerve in Parliament,

Parliament, ſhall be preſented to the Houſe of Commons, a day and hour ſhall, by the ſaid Houſe, be appointed for taking the ſame into conſideration; and notice thereof in writing ſhall be forthwith given, by the Speaker, to the petitioners and the ſitting members, or their reſpective agents, accompanied with an order to them to attend the Houſe, at the time appointed, by themſelves, their counſel, or agents.

2. Provided always, That no ſuch petition ſhall be taken into conſideration within fourteen days after the appointment of the Committee of Privileges.

3. Provided alſo, That the Houſe may alter the day and hour ſo appointed for taking ſuch petition into conſideration, and appoint ſome ſubſequent day and hour for the ſame, as occaſion ſhall require; giving to the reſpective parties the like notice of ſuch alteration, and order to attend on the ſaid ſubſequent day and hour, as aforeſaid.

4. And be it further enacted, That at the time appointed for taking ſuch petition into conſideration, and previous to the reading the order of the day for that purpoſe, the ſerjeant at arms ſhall be directed to go with the mace to the places adjacent, and require the immediate attendance of the members on the buſineſs of the Houſe; and that after his return the Houſe ſhall be counted, and if there be leſs than one hundred members preſent, the order for taking ſuch petition into conſideration ſhall be immediately adjourned to a particular hour on the following day (Sunday and Chriſtmas day always excepted); and the Houſe ſhall then adjourn to the ſaid day; and the proceedings of all Committees, ſubſequent to ſuch notice from the ſaid ſerjeant, ſhall be void: And, on the ſaid following day, the Houſe ſhall proceed in the ſame manner; and ſo, from day to day, till there be an attendance of one hundred members at the reading the order of the day, to take ſuch petition into conſideration.

5. And be it further enacted, That if after ſummoning the members, and counting the Houſe as aforeſaid, one hundred members ſhall be found to be preſent; the petitioners by themſelves, their counſel or agents, and the counſel or agents of the ſitting members, ſhall be ordered to attend at the bar; and then the door of the Houſe ſhall be locked, and no member ſhall be ſuffered to enter into

or

or depart from the Houſe, until the petitioners, their counſel, or agents for the ſitting members, ſhall be directed to withdraw as herein after is mentioned: And when the door ſhall be locked as aforeſaid, the order of the day ſhall be read, and the names of all the members of the Houſe, written or printed on diſtinct pieces of parchment or paper, being all as near as may be of equal ſize, and rolled up in the ſame manner, ſhall be put in equal numbers into ſix boxes or glaſſes, to be placed on the table for that purpoſe, and ſhall there be ſhaken together; and then the clerk or clerk aſſiſtant attending the Houſe ſhall publickly draw out of the ſaid ſix boxes or glaſſes alternately the ſaid pieces of parchment or paper, and deliver the ſame to the Speaker, to be by him read to the Houſe; and ſo ſhall continue to do, until forty-nine names of the members then preſent be drawn.

6. Provided always, That if the name of any member who ſhall have given his vote at the election ſo complained of as aforeſaid, or who ſhall be a petitioner complaining of an undue election or return, or againſt whoſe return a petition ſhall be then depending, or whoſe return ſhall not have been brought in fourteen days, ſhall be drawn; his name ſhall be ſet aſide, with the names of thoſe who are abſent from the Houſe.

7. Provided alſo, That if the name of any member of ſixty years of age or upwards be drawn, he ſhall be excuſed from ſerving on the ſelect Committee, to be appointed as herein after is mentioned, if he require it, and verify the cauſe of ſuch requiſition upon oath.

8. Provided alſo, That if the name of any member who has ſerved in ſuch ſelect Committee during the ſame ſeſſion be drawn, he ſhall, if he requires it, be excuſed from ſerving again in any ſuch ſelect Committee, unleſs the Houſe ſhall, before the day appointed for taking the ſaid petition into conſideration, have reſolved, that the number of members who have not ſerved on ſuch ſelect Committee, in the ſame ſeſſion, is inſufficient to fulfil the purpoſes of this act, reſpecting the choice of ſuch ſelect Committee.

9. Provided always, That no member who, after having been appointed to ſerve in any ſuch ſelect Committee, ſhall, on account of inability or accident, have been excuſed from

from attending the ſame throughout, ſhall be deemed to have ſerved on any ſuch ſelect Committee.

10. And be it further enacted, That if any other member ſhall offer and verify upon oath any other excuſe, the ſubſtance of the allegations ſo verified upon oath ſhall be taken down by the ſaid clerk, in order that the ſame may be afterwards entered on the Journals, and the opinion of the Houſe ſhall be taken thereon; and if the Houſe ſhall reſolve, that the ſaid member is unable to ſerve, or cannot without great and manifeſt detriment ſerve in ſuch ſelect Committee, he alſo ſhall be excuſed from ſuch ſervice.

11. And be it further enacted, That inſtead of the members ſo ſet aſide and excuſed, the names of other members ſhall be drawn; who may, in like manner, be ſet aſide or excuſed, and others drawn to ſupply their places, until the whole number of forty-nine members, not liable to be ſo ſet aſide or excuſed, ſhall be complete; and the petitioners or their agents ſhall then name one, and the ſitting members, or their agents, another, from among the members then preſent, whoſe names ſhall not have been drawn, to be added to thoſe who ſhall have been ſo choſen by lot.

12. Provided always, That either of the members ſo nominated ſhall or may be ſet aſide, for any of the ſame cauſes as thoſe choſen by lot; or ſhall, if he requires it, be excuſed from ſerving on the ſaid ſelect Committee; and the party who nominated the member ſo ſet aſide, or excuſed, ſhall nominate another in his ſtead, and ſo continue to do as often as the caſe ſhall happen, until his nominee is admitted.

13. And be it further enacted, That as ſoon as the ſaid forty-nine members ſhall have been ſo choſen by lot, and the two members to be added thereunto ſhall have been ſo nominated as aforeſaid, the door of the Houſe ſhall be opened, and the Houſe may proceed upon any other buſineſs; and liſts of the forty-nine members ſo choſen by lot ſhall then be given to the petitioners, their counſel or agents, and the counſel or agents for the ſitting members, who ſhall immediately withdraw, together with the clerk appointed to attend the ſaid ſelect Committee; and the ſaid petitioners and ſitting members, their counſel or agents, beginning on the part of the petitioners, ſhall alternately ſtrike off one of the ſaid forty-nine members,

until

until the ſaid number ſhall be reduced to thirteen; and the ſaid clerk, within one hour at fartheſt from the time of the parties withdrawing from the Houſe, ſhall deliver in to the Houſe the names of the thirteen members then remaining; and the ſaid thirteen members, together with the two members nominated as aforeſaid, ſhall be ſworn at the table, well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence; and ſhall be a ſelect Committee to try and determine the merits of the return or election appointed by the Houſe to be that day taken into conſideration; and the Houſe ſhall order the ſaid ſelect Committee to meet at a certain time to be fixed by the Houſe, which time ſhall be within twenty-four hours of the appointment of the ſaid ſelect Committee, unleſs a Sunday or Chriſtmas day ſhall intervene; and the place of their meeting or ſitting ſhall be ſome convenient room or place adjacent to the Houſe of Commons or Courts of Requeſts, properly prepared for that purpoſe.

14. Provided always, That, on the parties withdrawing as aforeſaid, the Houſe ſhall continue ſitting; and the ſaid fifty-one members, ſo choſen and nominated, ſhall not depart the Houſe, till the time for the meeting of the ſaid ſelect Committee ſhall be fixed.

15. Provided always, and be it further enacted, That if upon the drawing out the name of any member by lot as aforeſaid, the ſaid petitioners or ſitting members, or their agents, ſhall declare, that ſuch member is intended to be one of the two nominees to be nominated by them reſpectively; and if ſuch member ſhall conſent to ſuch nomination, the name of ſuch member ſo drawn by lot ſhall be ſet aſide; and, unleſs objected to as aforeſaid, he ſhall ſerve as ſuch nominee, and the name of another member ſhall be drawn to ſupply his place, to complete the number of forty-nine members to be drawn by lot; and if the ſaid petitioners or ſitting members, or their agents, ſhall not reſpectively nominate a member then preſent, who ſhall be admitted according to the directions of this act, then the want of ſuch nomination ſhall be ſupplied, by drawing out, inſtead thereof, the name of one or two members, as the caſe ſhall require; who ſhall be drawn by lot in the like manner, and ſubject to the like objections and excuſes,

as the other forty-nine members already drawn by lot, and ſhall be added to the liſts of the forty-nine members, and ſhall be liable to be ſtruck off in the ſame manner; leaving always the number of fifteen members in the whole, and no more, as a ſelect Committee for the purpoſes aforeſaid.

16. And, for the greater diſpatch and certainty in the proceeding herein before deſcribed, be it further enacted, That the names of all the members ſo written and rolled up as herein before directed, ſhall, previous to the day appointed for taking any ſuch petition into conſideration, be prepared by the ſaid clerk or clerk aſſiſtant, and by him put into a box or parcel in the preſence of the Speaker, together with an atteſtation, ſigned by the clerk or clerk aſſiſtant, purporting, that the names of all the members were by him put therein the day of in the year which ſaid box or parcel the Speaker ſhall ſeal with his own ſeal; and to the outſide thereof ſhall annex an atteſtation ſigned by himſelf, purporting, that the ſaid box or parcel was on the day of in the year made up in his preſence, in the manner directed by this act; and that as ſoon as the parties ſhall be withdrawn as aforeſaid, and before the Houſe ſhall enter on any other buſineſs, any member may require, that the names of all the members, which remain undrawn, ſhall be drawn and read aloud by the ſaid clerk or clerk aſſiſtant.

17. And be it further enacted, That the ſaid ſelect Committee ſhall, on their meeting, elect a Chairman from among ſuch of the members thereof as ſhall have been choſen by lot; and if, in the election of a chairman, there be an equal number of voices, the member whoſe name was firſt drawn in the Houſe ſhall have a caſting voice; ſo likewiſe, in caſe there ſhould ever be occaſion for electing a new Chairman, on the death or neceſſary abſence of the Chairman firſt elected.

18. And be it further enacted, That the ſaid ſelect Committee ſhall have power to ſend for perſons, papers and records; and ſhall examine all the witneſſes who come before them upon oath; and ſhall try the merits of the return, or election, or both; and ſhall determine, by a majority of voices, of the ſaid ſelect Committee, whether the petitioners,

ers, or the ſitting members, or either of them, be returned or elected, or whether the election be void; which determination ſhall be final between the parties to all intents and purpoſes: and the Houſe, on being informed thereof by the Chairman of the ſaid ſelect Committee, ſhall order the ſame to be entered in their Journals, and give the neceſſary directions for confirming or altering the return, or for the iſſuing a new writ for a new election, or for carrying the ſaid determination into execution, as the caſe may require.

19. And be it further enacted, That the ſaid ſelect Committee ſhall ſit every day (Sunday and Chriſtmas day only excepted) and ſhall never adjourn for a longer time than twenty-four hours, unleſs a Sunday or Chriſtmas day intervene, without leave firſt obtained from the Houſe, upon motion, and ſpecial cauſe aſſigned for a longer adjournment; and in caſe the Houſe ſhall be ſitting at the time to which the ſaid ſelect Committee is adjourned, then the buſineſs of the Houſe ſhall be ſtayed, and a motion ſhall be made for a further adjournment, for any time, to be fixed by the Houſe, not exceeding twenty-four hours, unleſs a Sunday or Chriſtmas day intervene.

20. And be it further enacted, That where the time preſcribed by this act for the meeting, ſitting, or adjournment of the ſaid ſelect Committee, ſhall, by the intervention of a Sunday or Chriſtmas day, exceed twenty-four hours, ſuch meeting, ſitting, or adjournment, ſhall be within twenty-four hours from the time of appointing or fixing the ſame, excluſive of ſuch Sunday or Chriſtmas day.

21. And be it further enacted, That no member of the ſaid ſelect Committee ſhall be allowed to abſent himſelf from the ſame, without leave obtained from the Houſe, or an excuſe allowed by the Houſe at the next ſitting thereof, on ſpecial cauſe ſhewn and verified upon oath; and the ſaid ſelect Committee ſhall never ſit, until all the members to whom ſuch leave has not been granted, nor excuſe allowed, are met; and in caſe they ſhall not all meet within one hour after the time to which the ſaid ſelect Committee ſhall have been adjourned, a farther adjournment ſhall be made in the manner as before directed, and reported, with the cauſe thereof, to the Houſe.

22. And be it further enacted, That the Chairman of the ſaid ſelect Committee ſhall, at the next meeting of the

Houſe, always report the name of every member thereof who ſhall have been abſent therefrom without ſuch leave or excuſe as aforeſaid; and ſuch member ſhall be directed to attend the Houſe at the next ſitting thereof, and ſhall then be ordered to be taken into the cuſtody of the ſerjeant at arms attending the Houſe, for ſuch neglect of his duty, and otherwiſe puniſhed or cenſured at the diſcretion of the Houſe; unleſs it ſhall appear to the Houſe, by facts ſpecially ſtated and verified upon oath, that ſuch member was, by a ſudden accident, or by neceſſity, prevented from attending the ſaid ſelect Committee.

23. And be it further enacted, that if more than two members of the ſaid ſelect Committee ſhall on any account be abſent therefrom, the ſaid ſelect Committee ſhall adjourn in the manner herein before directed; and ſo from time to time, until thirteen members are aſſembled.

24. And be it further enacted, That in caſe the number of members able to attend the ſaid ſelect Committee ſhall, by death or otherwiſe, be unavoidably reduced to leſs than thirteen, and ſhall ſo continue for the ſpace of three ſitting days, the ſaid ſelect Committee ſhall be diſſolved, and another choſen to try and determine the matter of ſuch petition in manner aforeſaid; and all the proceedings of the ſaid former ſelect Committee ſhall be void, and of no effect.

25. And be it further enacted, That if the ſaid ſelect Committee ſhall come to any reſolution other than the determination above mentioned, they ſhall, if they think proper, report the ſame to the Houſe for their opinion, at the ſame time that the Chairman of the ſaid ſelect Committee ſhall inform the Houſe of ſuch determination; and the Houſe may confirm or diſagree with ſuch reſolution, and make ſuch orders thereon, as to them ſhall ſeem proper.

26. Provided always, That if any perſon ſummoned by the ſaid ſelect Committee, ſhall diſobey ſuch ſummons; or if any witneſs before ſuch ſelect Committee ſhall prevaricate, or ſhall otherwiſe miſbehave in giving, or refuſing to give evidence; the Chairman of the ſaid ſelect Committee, by their direction, may at any time, during the courſe of their proceedings, report the ſame to the Houſe, for the interpoſition of their authority or cenſure, as the caſe ſhall require.

27. And be it further enacted, That whenever the ſaid ſelect Committee ſhall think it neceſſary to deliberate amongſt themſelves, upon any queſtion which ſhall ariſe in the courſe of the trial, or upon the determination thereof, or upon any reſolution concerning the matter of the petition referred to them as aforeſaid; as ſoon as the ſaid ſelect Committee ſhall have heard the evidence and counſel on both ſides relative thereunto, the room or place where they ſhall ſit ſhall be cleared, if they ſhall think proper, while the members of the ſaid ſelect Committee conſider thereof; and all ſuch queſtions, as well as ſuch determination and all other reſolutions, ſhall be by a majority of voices; and if the voices ſhall be equal, the Chairman ſhall have a caſting voice.

28. Provided always, That no ſuch determination as aforeſaid ſhall be made, nor any queſtion be propoſed, unleſs thirteen members ſhall be preſent; and no member ſhall have a vote on ſuch determination, or any other queſtion or reſolution, who has not attended during every ſitting of the ſaid ſelect Committee.

29. And be it further enacted, That the oaths by this act directed to be taken in the Houſe, ſhall be adminiſtered by the ſaid clerk or clerk aſſiſtant, in the ſame manner as the oaths of allegiance and ſupremacy are adminiſtered in the Houſe of Commons; and that the oaths by this act directed to be taken before the ſaid ſelect Committee ſhall be adminiſtered by the clerk attending the ſaid ſelect Committee; and that all perſons who ſhall be guilty of wilful and corrupt perjury in any evidence which they ſhall give before the Houſe, or the ſaid ſelect Committee, in conſequence of the oath which they ſhall have taken by the direction of this act, ſhall, on conviction thereof, incur and ſuffer the like pains and penalties to which any other perſon, convicted of wilful and corrupt perjury, is liable by the laws and ſtatutes of this realm.

30. And be it further enacted, That this act ſhall continue in force ſeven years, and till the end of the ſeſſion of Parliament next after the expiration of the ſaid ſeven years, and no longer.

Statute 11 George III. Cap. 42.

An Act to explain and amend an Act, made in the laſt Seſſion of Parliament, intituled, An Act to regulate the Trials of controverted Elections, or Returns, of Members to ſerve in Parliament.

1. WHEREAS an act was paſſed in the laſt ſeſſion of Parliament, intituled, An act to regulate the trials of controverted elections, or returns of members to ſerve in Parliament: And whereas further proviſions may be neceſſary to prevent all obſtructions and difficulties, which in certain caſes may ariſe in the execution of the ſaid act; be it therefore enacted by the King's moſt excellent Majeſty, by and with the advice and conſent of the Lords ſpiritual and temporal, and Commons, in this preſent Parliament aſſembled, and by the authority of the ſame, That from and after the paſſing of this act, if ſeveral parties, on diſtinct intereſts or grounds of complaint, ſhall preſent ſeparate petitions, complaining of an undue election, or return of a member or members to ſerve in Parliament, the ſame notices and orders ſhall be given to all ſuch parties, or their reſpective agents, as by the ſaid act are directed to be given to the ſitting members, or the petitioners therein mentioned, or their reſpective agents.

2. And be it further enacted, That the clauſe in the ſaid act which provides, that no petition ſhall be taken into conſideration within fourteen days after the appointment of the Committee of privileges, be repealed; and that from henceforth no petition, complaining of an undue election, or return of a member or members to ſerve in Parliament, ſhall be taken into conſideration within fourteen days after the commencement of the ſeſſion of Parliament in which it is preſented, nor within fourteen days after the return to which it relates, ſhall be brought into the office of the clerk of the Crown.

3. And be it further enacted, That if at the time of drawing by lot the names of the members, in manner preſcribed by the ſaid act, the number of forty-nine members, not ſet aſide nor excuſed, cannot be compleated, the Houſe ſhall proceed in the manner they are directed by the ſaid act to proceed, in caſe there be leſs than one hundred members

bers preſent at the time therein preſcribed for counting the Houſe; and ſo, from day to day, as often as the caſe ſhall happen.

4. And be it further enacted, That the day appointed for taking any petition, complaining of an undue election, or return of a member or members to ſerve in Parliament, into conſideration, the Houſe ſhall not proceed to any other buſineſs whatſoever, except the ſwearing of members, previous to the reading of the order of the day for that purpoſe.

5. And be it further enacted, That if the ſelect Committee ſhall have occaſion to apply or report to the Houſe, in relation to adjournment of the ſaid ſelect Committee, the abſence of the members thereof, or the non-attendance or miſbehaviour of witneſſes ſummoned to appear, or appearing before them, and the Houſe ſhall be then adjourned for more than three days, the ſaid ſelect Committee may alſo adjourn to the day appointed for the meeting of the Houſe.

6. And be it further enacted, That if on a complaint by petition of an undue election or return, there ſhall be more than two parties before the Houſe, on diſtinct intereſt, or complaining or complained of upon different grounds, whoſe right to be elected or returned may be affected by the determination of the ſaid ſelect Committee, each of the ſaid parties ſhall ſucceſſively ſtrike off a member from the forty-nine members to be choſen by lot, until the ſaid number be reduced to thirteen, in the ſame manner as by the ſaid act is directed for the ſtriking off a member alternately by the parties therein mentioned; and the liſts of the forty-nine members choſen by lot, ſhall, for this purpoſe, be given to all the ſaid parties, and the order in which the ſaid parties ſhall ſo ſtrike off the ſaid members ſhall be determined by lot after they are withdrawn from the bar, and in ſuch caſe, neither of the ſaid parties (there being more than two) ſhall be permitted to name a member to be added to the members ſo drawn by lot as aforeſaid; but that as ſoon as the liſt of thirteen members ſhall be returned by the parties to the Houſe, ſuch thirteen members ſhall immediately withdraw, and ſhall by themſelves chuſe two members then preſent in the Houſe, whoſe names ſhall not have been drawn, to be added to the ſaid thirteen members; and ſhall, within one hour from the time of their withdrawing,

drawing, report the names of ſuch two members to the Houſe; which two members ſhall be liable to be ſet aſide on the like objections, for which nominees may be ſet aſide by virtue of the ſaid act: And in caſe ſuch two members, or either of them, ſhall be ſet aſide for any of the cauſes aforeſaid, then the ſaid thirteen members ſhall chuſe one or two other members, as the caſe ſhall require, until two members are choſen, againſt whom none of the objections to nominees mentioned in the ſaid act ſhall be taken and allowed; and that the names of ſuch two members ſhall be then added to the ſaid liſt of thirteen members; and all the ſaid fifteen members ſhall be ſworn at the table, and they ſhall be the ſelect Committee appointed for the purpoſes expreſſed in this and the ſaid former act.

7. And be it further enacted, That where the ſaid nominees are by this act directed to be named by the ſaid thirteen members, no member preſent at the time of the ballot ſhall depart from the Houſe until the time for the meeting of the ſaid ſelect Committee ſhall be fixed.

Statute 14 George III. Cap. 15.

An Act for making perpetual Two Acts, paſſed in the Tenth and Eleventh years of his preſent Majeſty, for regulating the Trials of controverted Elections or Returns, of Members to ſerve in Parliament.

1. WHEREAS an act, paſſed in the tenth year of the reign of his preſent Majeſty, intituled, An act to regulate the Trials of controverted Elections, or Returns of Members to ſerve in Parliament, which act was made to continue for a limited time only: And whereas another act paſſed in the eleventh year of the reign of his Majeſty, intituled an Act to explain and amend an act, made in the laſt ſeſſion of Parliament, intituled, An act to regulate the Trials of controverted Elections, or returns of Members to ſerve in Parliament: And whereas the proviſions of the ſaid recited acts are well adapted to procure to the Commons of this realm a free and impartial trial of controverted elections of members to ſerve in Parliament, and have been found,

found, by experience, to be practicable and beneficial: May it therefore pleaſe your Majeſty that it may be enacted; and be it enacted by the King's moſt excellent Majeſty, by and with the advice and conſent of the Lords ſpiritual and temporal, and Commons, in this preſent Parliament aſſembled, and by the authority of the ſame, That the ſaid recited acts, paſſed in the tenth and eleventh years of his preſent Majeſty, ſhall be, and are hereby made perpetual.

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